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THE ACTS

FOR THE

COMMUTATION OF TITHES

IN

ENGLAND AND WALES,

(6 & 7 WIL. 4, c. 71. 1 VICT. c. 69. 1 & 2 VICT. c. 64.)

AND

THE REPORT OF THE TITHE COMMISSIONERS ON SPECIAL CASES,

WITH

ANALYSIS, EXPLANATORY NOTES, AND INDEX.

NEW EDITION,
With considerable Additions.

BY

JOHN MEADOWS WHITE, ESQ.

SOLICITOR TO THE TITHE COMMISSIONERS FOR ENGLAND AND WALES.

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TO

WILLIAM BLAMIRE, ESQUIRE,

THOMAS WENTWORTH BULLER, ESQUIRE,

AND

THE REV. RICHARD JONES, M.A.

THE TITHE COMMISSIONERS FOR ENGLAND AND WALES,

THE FOLLOWING ANALYSIS AND EDITION

OF THE

TITHE COMMUTATION ACTS,

(WITH EXPLANATORY NOTES,)

ARE, WITH THEIR PERMISSION,

RESPECTFULLY INSCRIBED

BY THEIR OBLIGED AND OBEDIENT SERVANT,

JOHN MEADOWS WHITE

1, Frederick's Place, Old Jewry,
1*st October*, 1838.

NOTICE

TO THE FIRST EDITION.

HAVING been directed by Lord John Russell to attend the Parliamentary Counsel to the Home Office (Mr. Drinkwater), during the progress, through both Houses of Parliament, of the great and healing measure brought forward by his Lordship for the Commutation of Tithes in England and Wales, and having thus become acquainted with its details and purport, from a period immediately subsequent to its first introduction into the House of Commons, I trust that this early edition of the Act, with an Analysis and Notes, may not be unacceptable. It will readily be seen that what I have written is intended for plain and unlearned readers; but I should have felt less confidence than I do that my observations may be useful even to this class, if I had not had access to Mr. Drinkwater's notes and papers, with permission to use them as freely and fully as I thought proper. The Analysis of the Act is chiefly taken from one prepared by that gentleman for the use of the conductors of the Bill, and will be found of great service in explaining its provisions.

I have also had the advantage of submitting the work to the Rev. Professor Jones,[a] of Hayleybury and King's Colleges, the author of an admirable pamphlet upon the subject of Tithe Commutation, and the various modes by which it might be effected: I trust he will allow me to make this public acknowledgment of the valuable suggestions I have received from him.

JOHN MEADOWS WHITE.

1, FREDERICK'S PLACE, OLD JEWRY,
August 18, 1836.

[a] Since appointed to be one of the Tithe Commissioners, by his Grace the Archbishop of Canterbury.

ADVERTISEMENT

TO THE PRESENT EDITION.

NEARLY 10,000 copies of the former Editions having been disposed of, and the work being still in demand, the present Edition, with the Report of the Commissioners on Special Adjudications, has been published, adding the two Acts passed in the last and present years for the amendment of the original Act. As these additions, with the further notes, have considerably increased the size of the work, I have omitted the forms,* as they may be obtained gratuitously by interested parties from the Commissioners, and, from their number and length, must, if inserted, have more than doubled the price which it has been found necessary to affix to this edition. The notes have been so revised as to adapt the work to the present juncture, a period which possesses much interest as embracing the experience of two years in the working of voluntary commutations, and as being the time when the compulsory powers of the Commissioners come in force. The Commissioners having recently published a document, saying how they propose, in the first instance, to work these powers, its purport is given in a note to the 36th Clause, and a note applying generally to the compulsory powers has been added at the end of the work. The index is adapted to the three Acts.

J. M. W.

1, FREDERICK'S PLACE, OLD JEWRY,
1*st October*, 1838.

* But see page 136.

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A C T

FOR

THE COMMUTATION OF TITHES

IN

ENGLAND AND WALES.

THE object of this Act is to convert all the uncommuted tithes in England and Wales into a corn rent-charge, payable in money according to the value of a fixed quantity of corn, as ascertained from year to year by the average price of corn for the seven years ending at the preceding Christmas.

The mode of making this conversion is, first, to find the gross average money value of the tithes of each parish for seven years ending Christmas 1835; secondly, to apportion the amount of that value upon the lands of the several tithe-payers; thirdly, to ascertain how much corn could be purchased with such amount; one-third of it to be laid out in wheat, one-third in barley, and one-third in oats, at the average price ascertained by the weekly official returns of the price of corn for the seven years preceding Christmas 1835; fourthly and finally, in every future

year, to make payable the price of the same quantity of wheat, barley, and oats, at their average prices, founded on a like calculation of the returns for the seven years ending at each preceding Christmas.

A similar system, as applicable to rent, has been long in practice in Scotland, and has given great satisfaction; chiefly because it fixes the amount of the rent in grain, whilst it allows of a variation in value, according to the average market price of the grain of which the rent consists.

The Act provides two methods of commutation :— first, By parochial agreement, voluntary on the part of a majority of persons having two-thirds interest in the lands, two-thirds interest in the great tithes, and two-thirds interest in the small tithes, but binding on the minority if unappealed against, or if no sufficient cause of objection shown; secondly, By compulsory awards. The machinery to regulate, confirm, control, and effect these agreements and awards, is a central Board of Commissioners, with assistant commissioners, and an establishment under them adequate for the purpose.

Parochial agreements and apportionments to be binding must be confirmed by the commissioners, and compulsory apportionments and awards are made by them; the latter power having come into operation on the 1st October, 1838.

In both cases, the gross value of the tithes payable by a parish, or district (allowed to be treated as a parish for the purpose of commutation by the commissioners,) is first to be ascertained. In the case of a voluntary agreement, it is not probable that there will be much difficulty in ascertaining this. In the case of a compulsory award, the commissioners are required

by the Act to take the seven years' value of the tithes, if paid in kind, or the compositions (if any) paid during the like period, as the basis of the commutation. A power is given to them, when the average value so ascertained will not fairly represent the sum which ought to be taken for calculating a permanent commutation, to diminish or increase such sum to the extent of one-fifth, or twenty per cent. And in cases of fraud, collusion, or special circumstances, a discretion is given to the commissioners to disregard the compositions altogether, and to adopt the average upon the basis of payments from similar lands in the neighbourhood.

After the gross value of the tithes is ascertained, the landowners are to appoint valuers, to apportion the amount amongst them. If no voluntary apportionment be made in six months, the commissioners must make such apportionment. As soon as the apportionment is complete the commissioners are to confirm it, and it then becomes binding on all parties, and fixes the value of the rent-charge to be paid in future in the place of the tithes, by the several landowners in the parish; and this amount is to be thereafter rendered upon a calculation of the price of grain as before mentioned. The case of every kind of tithe, moduses, exemptions, and the like, is provided for in the Act; legal disabilities are removed; facilities are given for referring all disputes to arbitration, or to an immediate and cheap mode of trial, or to the commissioners, and for charging the expenses of the commutation on the lands of owners having less estates than fee-simple or fee-tail; and incumbents have a similar power of charging the expenses on their livings.

Special provisions are also inserted to meet cases when the tithe is not of an ordinary nature, such as hops, fruits, garden produce and wood; and also for special apportionments so as to discharge any part of the lands which the owner may desire, and fix it on other parts of his lands, provided the annual value of the latter exceeds by three times the value of the rent-charge proposed to be fixed upon it. In the case of ecclesiastical tithes, land to an extent not exceeding twenty acres may be given by way of commutation, either in the parochial agreement, if the land be given parochially; or in discharge of a portion of the rent-charge, after the apportionment is made, but before its final confirmation, if the land be given by an individual.

The consent of the patron is required in all cases of ecclesiastical tithe commuted by voluntary agreements, and such agreements are to be submitted to the Bishop of the diocese, for his observations and opinion before confirmation by the Commissioners.

No one is to be personally liable for the rent-charge, but the remedy, as in the case of ordinary rent-charges, is by distress and entry on the lands out of which it issues, the party entering being liable to account upon a judge's order instead of the tedious and vexatious course of a suit in Chancery.

The average prices for the seven years ending Christmas 1835, are declared by the Act, 1 Vict. c. 69. § 7, to be for a bushel of wheat 7*s.* 0½*d.*; barley, 3*s.* 11½*d.*; oats, 2*s.* 9*d.* The amount of every gross parochial rent-charge is to be converted into and fixed permanently as a corn rent-charge, one-third in each kind of grain, at the prices fixed by this average, and

to be payable half-yearly at its money value, to be ascertained in every year by the averages of the seven years ending at the preceding Christmas.

For example:—This average, when taken as the basis for commuting *300l.* of tithes, would produce the following result:—

	Qrs.
100*l.* laid out in wheat, at 56*s.* 3*d.* per quarter, would produce	35·56
100*l.* laid out in barley, at 31*s.* 9*d.* per quarter, would produce	62·98
100*l.* laid out in oats, at 22*s.* per quarter, would produce	90·9

Suppose that in any year after the completion of the commutation, the average prices of the seven years ending at the preceding Christmas, should prove to be—

Wheat	60*s.*
Barley	40*s.*
Oats	20*s.*

Then, a corn rent-charge rendering the number of quarters above specified, and which are at the time of the commutation worth 300*l.*, would produce on the altered prices, as follows:—

35·56 quarters of wheat, at 60*s.*	£106	13	6
62·98 — of barley, at 40*s.*	125	19	2
90·9 — of oats, at 20*s.*	90	18	0
Total value of rent-charge . .	£323	10	8

Such is the kind of variation which will take place under the Act of which the following is an Analysis.

ANALYSIS

OF

AN ACT FOR THE COMMUTATION OF TITHES IN ENGLAND AND WALES.

The figures in the text point out the number of the clause in which the provision treated of is contained.

CLAUSES I.—XI.

APPOINTMENT AND GENERAL POWER OF COMMISSIONERS AND ASSISTANT COMMISSIONERS.

THREE commissioners are to be appointed; two by the Secretary of State, and one by the Archbishop of Canterbury, removable at their joint pleasure, (1.) They are to sit as a board in the Metropolis, and superintend the execution of the Act. Instruments and copies under their seal are to be received in evidence, and no agreement or award is to be in force unless so sealed or stamped, (2.) They are to make a yearly report of their proceedings to the Secretary of State, which report is to be laid before Parliament, (3.)

The commissioners are empowered to appoint a sufficient number of assistant commissioners, a secretary, and assistant secretary, and such clerks, messengers, and officers, as they may deem necessary, and to supply vacancies as they occur; but they are not to

appoint more than twelve assistant commissioners, without the consent of the treasury; and the number of clerks, messengers, and other officers, is subject to the like consent, (4.) Neither commissioners nor assistant commissioners are to sit in the House of Commons, (5,) and the duration of the commission is limited to five years, and the end of the then next Session of Parliament, (6.)

The salary of a commissioner is not to exceed 1500*l.*; that of an assistant commissioner 3*l.* per diem, while actually employed in the business of the commission, besides his reasonable travelling expenses as allowed by the treasury. The salaries of the secretary and assistant secretary are not to exceed 800*l.*, and those of the clerks, &c. are to be in fit proportion, (7.)

The salaries and expenses are charged on the consolidated fund, (8.)

The commissioners and assistant commissioners are to take an oath for the due execution of their offices, and their appointments are to be published in the Gazette, (9.)[a] They have power to examine witnesses upon oath, and to call for returns and books and papers, but not to require the disclosure of titles, nor to compel witnesses to go more than ten miles from home, (10.)

With the exception of acts required to be done under the seal of the commissioners, the assistant commissioners may exercise all or such of the powers of the commissioners as the commissioners may think fit to delegate to them, (11.)[b]

[a] See 1 Vict. c. 69. § 13. [b] Ib. § 2.

CLAUSES XII.—XVI.

INTERPRETATION CLAUSES.[a]

The masculine gender and singular number are used in this bill to express both sexes, and more persons than one; also the Crown and bodies corporate, to whom the word "person" is extended.

"Lands" is used for all messuages, lands, tenements, and hereditaments.

"Tithes," for all uncommuted tithes, portions, and parcels of tithes, moduses, compositions, real and customary payments.

"Parish," "parochial," mean also extra-parochial places and those townships which (chiefly in the North,) are treated as separate parishes by 13th and 14th Ch. II. c. 12; also every district which the commissioners may direct to be considered as a district for the purposes of the Act.

"Landowner," "titheowner," mean persons in possession of the rents and profits, except tenants holding under a lease of not more than fourteen years, or under any lease paying a rent of not less than two-thirds of the clear yearly value. Tenants holding under *valuable* leases for more than fourteen years are treated as joint owners with their landlord, and persons in possession under a writ of execution or order of a court of equity are treated as joint owners with the persons against whom such writ or order is made, (12.)

The ownership or patronage of the Crown is to be exercised by those functionaries by whom the administration thereof is chiefly or usually managed, (13.)

[a] See 1 Vict. c. 69. § 14. and 1 & 2 Vict. c. 64. § 5.

Persons filling more than one character, *e. g.* patron and landowner or incumbent, may act and be dealt with in both characters, (14;) and if under legal disabilities may act by their proper legal representatives; or if there be no legal representative, then by such person as the commissioners may nominate to represent them, (15;) and all acts required to be done by any person may be done by his agent duly appointed according to the form given in the Act, (16.)

CLAUSES XVII.—XXXI.

VOLUNTARY AGREEMENTS FOR A RENT-CHARGE BETWEEN LAND-OWNERS AND TITHE-OWNERS.

The Act treats the commutation as consisting of two separate processes:—

1st. The determination of the total sum to be paid for the tithes of any parish.

2dly. The apportionment of the total sum among the different lands on which it is to be charged.

The first of these processes may be effected, 1st, by voluntary, 2dly, by compulsory, commutation. The voluntary determination of the total sum to be paid is the object of the clauses now under discussion.

(17, 18.) Any number of landowners or titheowners possessing an interest, (to be ascertained by the poor rates,) (19), equal to one-fourth of the titheable lands, or one-fourth of the great and small tithes, may summon a parochial meeting of all the landowners and all the titheowners of the parish, giving twenty-one days' notice; and any agreement

made at any such meeting, or adjourned meeting, (20), or signed within six months by the owners of two-thirds of the titheable lands, two-thirds of the great tithes, and two-thirds of the small tithes, if containing the particulars required by the Act, (21,) and if confirmed by the commissioners, is to be binding on the whole parish,[a] and on all interested parties.[b] The commissioners are to frame and furnish forms on the application of churchwardens and overseers, (22;)[c] and if the commissioners shall think fit, any commissioner or assistant commissioner may attend any such parochial meeting, and advise the terms of agreement, but without being then able to exercise compulsory powers, (23.) Suits and differences pending at the time of the agreement may be referred by the parties to arbitration, (24,) but reversioners will not be bound by such references unless sanctioned by the commissioners.

Agreements pending at the time of the Act passing may be confirmed in like manner (25); but no voluntary agreement is to be deemed executed by any ecclesiastical tithe-owner, unless consented to by the patron, (26.) When executed by a sufficient number of per-

[a] It is important to observe that the total sum is the only thing fixed in these agreements, and that although the agreement will probably be founded upon a calculation of what the individual payments up to that time have been, the latter may still be altered by the apportionment. This circumstance is one of the distinctive characteristics of the Act.

[b] The consent of the owners of the great tithes and small tithes is required separately, because, in fact, their interests are often opposite; and for a voluntary agreement, which is to bind the minority, every interest should be represented.

[c] Any party having an interest in a commutation may obtain these forms, on application at the office. See p. 136.

sons to make it binding, it is to be sent to the commissioners in London, who are to satisfy themselves that the proceedings have been regular and without fraud or collusion, and are thereupon to confirm it under their hands and official seal, (27.) In the case of ecclesiastical tithes no confirmation is to take place until four weeks after the Commissioners shall have sent notice to the Bishop for his observations and opinion, unless he shall sooner signify his approbation, (28). Although the main principle of the Act is a commutation for rent-charge, yet with a view to give facilities for acquiring and enlarging glebe, twenty acres of land may, in the case of ecclesiastical tithe, be set apart instead of an equivalent value of rent-charge, either by the agreement if the land is given parochially, or in the manner already pointed out in page 12, if the land be gived by an individual, (29, 30, 31.) The confirmation of the commissioners completes the first part of the process, and the sum thus agreed upon is thenceforward fixed on the parish.

CLAUSES XXXII.—XXXV.

APPORTIONMENT BY THE LAND-OWNERS AMONG THEIR RESPECTIVE LANDS OF THE TOTAL SUM AGREED FOR.

The total sum having been voluntarily agreed upon, the next step is to apportion it among the individual landowners. For this purpose the landowners are to meet again to choose valuers. The titheowners are not to attend this meeting, because they have no interest in this part of the question, beyond seeing that their rent-charge is properly secured; and this security will be insured without their interference in the

choice of valuers, by the subsequent provisions for a public discussion of the apportionment, and by a clause which comes late in the Act, (58,) providing that no close is to be charged with the rent-charge due upon any other lands unless it is of three times the value of such rent-charge.

The valuers, if more than one, are to be two or any other *even* number, half to be chosen by a majority of landowners in point of number, the other half by a majority in point of interest, or both majorities may agree to name the same person, (32.) The same meeting of landowners is to settle the principles according to which the valuers are to proceed, or if they are left uncontrolled by any rules so laid down for their guidance, they are to distribute the whole charge according to the best of their judgment, "having regard to the average titheable produce and productive quality of the lands;" subject, however, in every case to the following provision:—that all the lands are to have the full benefit of any modus or exemption attaching to them. In many cases where the exemption is complete or the modus general, this provision will be of very easy application; in other cases, where the modus covers only particular kinds of produce, an estimate must be made of the value of that privilege. If any lands are covered by a modus of so peculiar a character that this estimate is rendered difficult, previous application should be made to the commissioners for permission to treat those lands as a distinct parish for the purpose of the Act, (12.) The valuers are to subscribe a declaration that they will act faithfully, and to appoint an umpire before they proceed to business, (33.) They have the

power of entry, (34,) and of using old maps, which they are bound to adopt by the directions of three-fourths of the landowners, (35).[a] If any person thinks himself unfairly treated by the apportionment, he will have an opportunity of making objections to an assistant-commissioner, as provided at Cl. 61.[b]

CLAUSES XXXVI.—LII.

COMPULSORY AWARD BY THE COMMISSIONERS OF THE TOTAL RENT-CHARGE IN DEFAULT OF VOLUNTARY AGREEMENTS.

The commutation based upon a voluntary agreement having been brought to that stage at which the whole charges have been distributed among the lands liable to it by valuers chosen by the landowners, and proceeding according to the principles most in favour with them, the Act next takes up the question of commutation on the supposition that no voluntary agreement has been made.

Since the 1st October, 1838, the commissioners have the power to direct the necessary inquiries for a compulsory commutation in any parish in which no voluntary commutation has at that time been effected. But an express power is given to them of suspending their proceedings even after commencing them, if there should be indications of the probability of voluntary agreement, (36.) The foundation of the Commissioners' award in an ordinary case is to be the amount of the compositions paid, or of the value of the tithes taken in kind, during seven years ending at Christmas 1835. Where abatements have been made

[a] See 1 Vict. c. 69. § 1. [b] Ib. § 6.

upon tithe-rents, or compositions, on the ground of their being higher than the fair composition value of the tithes, the abated amount is to be the basis of the rent-charge. The rent-charge is to be subject to all parochial and county rates, and consequently, when the compositions have been paid free of such charges, an equivalent to what they would have paid had they been rated, is to be added to the composition before the rent-charge is calculated, (37.)[a]

The commissioners are to be empowered—in case the payments of these seven years are appealed against by the patron or by half the land-owners, or the tithe-owners, great or small, upon the ground that the seven years' average would not be a fair basis for commutation,—to increase or diminish the average sum so ascertained to an extent not exceeding one-fifth, or

[a] The reasons for this are many, although the plan of making the rent-charge free of rates and taxes appear at first sight to have the advantage of simplicity.

1. The poor-rates during the seven years ending Christmas 1835, have been much higher than they probably will be again, and it would be manifestly unjust to reduce the rent-charge permanently on a calculation founded on these extravagant payments. An attempt to allow for the probable reduction of poor rates and county rates would lead to endless disputes.

2. Many rates are unequal, or even illegal, and it would be necessary to institute an inquiry into them which would open a new source of quarrel, not necessarily belonging to the subject.

3. It would soon become an invidious thing that the tithe-owner should not contribute his share to the burdens of the parish: not only would he be debarred from interfering in parochial affairs while his indemnity should last, but in the end, the recollection of the terms on which he purchased it might become weak, and he might eventually be called upon, notwithstanding, to contribute like his neighbours.

See note([b]) to Clause 37, p. 37, *post*.

twenty per cent. A still wider latitude is allowed to the commissioners in cases of fraud or collusion, or in those which, owing to special circumstances, ought in their judgment to be separately treated. In all such cases the commissioners' Report to Parliament of the 1st May, 1838, as to the exercise of their discretion in this respect, is to be referred to, (38.)[a]

The cases so reserved for special adjudication are to be reported to the Secretary of State, and they are confined in the exercise of their discretion in special cases to the fixing of the rent-charge with regard to the average of the neighbouring parishes. The draft of the award, with so much of the report to the Secretary of State as relates to the special cases, is to be deposited in the parish for the purpose of some commissioner or assistant-commissioner hearing and determining objections to the award in such cases, (39.)

The tithe of hops, fruit, and garden produce, if the owner thereof shall give notice that they should be separately valued, is to be awarded in every case according to the average of some district to be fixed by the commissioners, (40.) This tithe does not fall within the provisions of the 38th clause, which contain the power to vary by one-fifth the average value, as ascertained by the 37th clause.

The tithe of wood may be also excepted upon notice, either from its owner, or the tithe-owner, and is to be estimated according to its value at the last cutting, and according to the value of similar woods in that part of the country during seven years ending Christmas 1835, (41.)[b]

[a] See Report, p. 117, also Note on Compulsory Commutation, p. 130.

[b] See Report, 1st May, 1838, p. 117, and note to Clause 41, p. 41.

The tithe of hop grounds and market gardens is to be divided into two parts, ordinary and extraordinary; and the lands which go out of cultivation are to be relieved from the extraordinary charge, which is to be imposed on such as are newly cultivated,[a] (42.)

The tithe of land converted from barren heath, and which shall have been exempted on that account during any part of the seven years from tithe, or which (under peculiar circumstances of occupation) may have been entitled to exemptions, such as glebe and the like, is upon a similar notice from landowner or titheowner, to be estimated according to the average of lands of the like description and quality in the parish and neighbourhood, (43.)

Moduses and the like are to be taken at their actual amount, the only change being that they will be called rent-charges instead of moduses, and will vary henceforth with the price of corn. If established by any decision during the seven years, the rent-charge will be according to the decision. So if any moduses have been set aside during the seven years, the rent-charge will not be fixed on the modus, but upon the principles of the decision, (44.)

The clauses from 44 to 48 inclusive give the commissioners and assistant-commissioners power to settle disputed claims, which shall be a hinderance to their making such award of the total rent-charge, (45,) subject to appeal in all cases exceeding 20*l.* in value

[a] This clause was first introduced by the hop growers, who were alarmed at having to pay the hop tithe in competition with future growers upon new land who would only pay the ordinary arable or pasture tithe. It is obvious that if they are to be relieved on the one hand they must be liable to an additional burden on the other.

to a court of law, in the mode pointed out by the Act, (46, 47, 48,) but in no case are the Statutes of Limitations as they regard tithes to be affected, (49.)

When the award is drawn up, which in the particulars it contains will be similar to a voluntary agreement (except that the commissioners cannot award the twenty acres of land allowed to be included in a voluntary agreement) (50), an assistant-commissioner will publish a copy of it in the parish, and sit on an appointed day to hear objections to it. If any objections be deemed valid, the proposed award is to be amended accordingly,[a] (51.)

When the award has been examined, and if necessary, amended, it will be sent to London, for the approval of the Central Board; and this approval, as in the case of a voluntary agreement, renders the proceedings so far settled and binding upon all persons then or thereafter interested in the lands or tithes, (52.)

CLAUSE LIII.

VOLUNTARY APPORTIONMENT BY THE LANDOWNERS OF THE TOTAL RENT-CHARGE COMPULSORILY AWARDED.

The award being confirmed, and the process so far completed, the voluntary principle is again resorted to, and an assistant-commissioner will summon a meeting of landowners to choose valuers, exactly as

[a] This provision of course is not necessary in the case of the voluntary agreement, because in that the representatives of the only three parties interested will be agreed, and no one of the three can make a disadvantageous bargain for his neighbour, not being a party to the agreement, which will not also be injurious to himself, since the agreement only relates to the total sum, and not to its final distribution among the tithe-payers.

See also 1 Vict. c. 69. § 4, 5, 6.

they would have done if the sum awarded had been voluntarily agreed upon, (53.)

CLAUSE LIV.

COMPULSORY APPORTIONMENT BY THE COMMISSIONERS.

If a voluntary agreement or compulsory award has been made, but has not been followed by a voluntary apportionment in six months, the commissioners are empowered to proceed to a compulsory apportionment. And it is probable that the activity of the voluntary process will be much increased by the knowledge that the commissioners may thus interpose, (54.)

CLAUSES LV. LVIII.—LXVIII.

PROVISIONS APPLICABLE TO EVERY APPORTIONMENT.

The Act having now brought down the process of commutation to the same stage, on the three different suppositions,—

1. Of a voluntary agreement and voluntary apportionment;

2. Of a compulsory award and voluntary apportionment;

3. Of a compulsory apportionment following a voluntary agreement or compulsory award,—

The following provisions are applicable to every commutation taken up at this stage.

The form of the apportionment is pointed out (55), which is made to include the agreement or award on which it is founded, and is to set forth all the lands referred to, and the amount charged on each.[a] On the request of any landowner the sum charged on his

[a] See 1 Vict. c. 69. § 4, 5.

lands may be differently apportioned amongst them, but so that no lands shall be charged on account of other lands to the extent of more than one-third of its value, (58.)[a] When made, the draft of the apportionment is to be annexed to the award of the total sum, and sent to the Central Board, (60.) After its receipt, a meeting, as in the case of an award, is to be held in the parish, and a commissioner or an assistant-commissioner will sit in the parish to hear and determine objections to it, (61.)[b] Moreover, if any landowner should then wish to commute the rent-charge for land with any ecclesiastical titheowner, he may do so, the limit of twenty acres being still preserved, (62.) The apportionment, after all these proceedings are disposed of, is then to be sent, engrossed on parchment, with the map or plan annexed, to the commissioners, who, on approval, are to confirm the same under their hands and seal, (63.)[c] Copies are to be deposited in the parish, and sent to the registrar of the diocese, (64;) and in every case, before confirming any agreement, award, or apportionment, if the commissioners think fit, notice is to be given to remainder-men and reversioners, (65.) After these proceedings have been completed, and the agreement, award, or apportionment is confirmed, it is not to be questioned, (66,) but the lands are to be discharged for ever from tithes, and the rent-charge paid instead.[d] No person is to be personally liable for the rent-charge, (67,) the sole mode of recovery being by distress and entry

[a] But see 1 Vict. c. 69. § 9. [b] Ib. § 6. [c] Ib. § 1.

[d] But see Clause 79, a case in which the collection of tithes may be continued after an agreement or award is confirmed.

(given by Clauses 84, 85). When lands are given for tithes or rent-charge, the lands are discharged from the tithes or rent-charge for which such land has been given, (68.)[a]

To prevent disputes, the power of entry is given by Clause 59 to the valuers employed by the commissioners, their pay being limited to two guineas a day, or the commissioners may agree on a fixed sum for their payment.

CLAUSES LVI. LVII.[b] LXVII.

CONVERSION OF THE MONEY RENT-CHARGE INTO A CORN RENT-CHARGE.

The rent-charge being fixed and apportioned, these clauses provide for its varying from year to year, with the price of wheat, barley, and oats, ascertained by the weekly returns of the prices of grain under 9th Geo. IV. c. 60, for the purpose of regulating the duty, (56.)[c]

The principle is, that after having ascertained how many bushels of corn could be bought with the amount of rent-charge, one-third being converted into wheat, one-third into barley, and one-third into oats, at the average price of the seven years next preceding Christmas 1835, (57,)[d] those quantities of grain are to be considered as the permanent rent-charge, and their money value is to be paid every year at the average

[a] 1 Vict. c. 69. § 10, 11.

[b] These two clauses (56, 57) are misplaced in the Act. This was discovered during the progress of the Bill; but as the error was unimportant, and its correction would have caused many material alterations in the engrossment, it was judged better not to remove them.

[c] See 1 Vict. c. 69. § 7.

[d] Ibid. § 4.

price of the seven years, ending at each preceding Christmas. This price will therefore vary every year, by taking in a year at the end and dropping one at the beginning of each period of seven years, (67.)

CLAUSES LXIX.—LXXI.

LIABILITY OF RENT-CHARGE TO THE SAME RATES AND INCUMBRANCES AS TITHES.

The principle on which the rent-charge is made subject to parochial rates and charges of the like kind, (69,) has been explained in considering Clauses 36 to 52. (See note, page xxii.)

Following the precedent of the Income Tax, these rates are made assessable on the actual occupier of the lands out of which the rent-charge issues, although payable by the owner of the rent-charge; with power for the occupier paying, or on whom the same may be levied (not being the owner of the rent-charge,) if only a tenant, to deduct the amount from his rent, or otherwise recover the same from his landlord—and for the landlord or occupier, if also the owner of the land, to deduct the amount from the owner of the rent-charge in settling accounts with him.[a] A power of inspecting and calling for copies of the rates is given to the owner of the rent-charge; who, knowing his liability, can appeal against the rates at any time, (70,) as if he were the person assessed.

[a] But for this provision, there would be no summary power of recovering the rates, as there is nothing tangible in the rent-charge which could be distrained on; and the owner of it, in many cases, would not be resident, or have goods and chattels in the parish.

But see 1 Vict. c. 69. § 8, giving power to assess the owner of the rent-charge in the manner there pointed out.

The rent-charges are made subject to the like charges, and similar remedies are given as existed with respect to the tithes for which they were commuted, such as mortgages, and the like.

Doubtful mortgages, &c. are excepted, to avoid giving validity to such charges, as, for instance, cases where clergymen cannot legally mortgage their livings.

The rent-charge, if held for life, or greater estate, is declared a freehold, and is made subject to the like liabilities, incidents, and exemptions, as tithes.

Provision is also made for extending the principle of this Act, to tithes authorized to be disposed of under former Acts of Parliament, or to the rent-charges for which these tithes have been or may be commuted. The rent-charges are not to merge in the estate out of which they issue, but tenants in fee-simple or fee-tail may, if they see fit, declare either the tithes or rent-charge merged in the freehold and inheritance of the lands out of which they issue, and so, by extinguishing them, withdraw them from the operation of this Act, (71.)[a]

CLAUSE LXXII.

PROVISION FOR FUTURE ALTERATION OF APPORTIONMENT.

By virtue of the provision for alteration of the apportionment (72), any landowner can discharge such portion as he may wish to sell, provided the residue of his land left charged with the rent-charge be of the value required by Section 58, *i. e.* three times the value of the rent-charge. As this is a

[a] See Act to facilitate Merger of Tithes in Land, 1 & 2 Vict. c. 64.

power which may be exercised long after the period of the commission, its due execution is entrusted to two justices, and the Commissioners of Land-Tax, who exist in every locality, following the precedent of the Property-Tax Commissioners, who were selected from the same body. The landowner, by these means, can, at any time, so alter the apportionment as to sell the greater part of his land free of rent-charge. It is, in effect, an imperfect power of redemption.[a]

The mode of apportionment is as nearly as may be the same as that required for the original apportionment, and due notice of it is to be sent to the persons with whom the original instrument of apportionment is deposited.

CLAUSES LXXIII.—LXXVIII.

EXPENSES OF COMMUTATION; BY WHOM TO BE PAID, AND HOW RECOVERED.[b]

The expenses of witnesses, production of books, &c., of settling suits and differences, and determining objections, are to be paid by the parties interested, as the commissioners may direct, (73.)

The expenses of surveyors, and of making an award, (not ordered by the commissioners, or any court, to be otherwise paid,) are to be borne by the landowners and titheowners jointly, as the commissioners may direct, (74.)

The expenses of apportionment are to be borne proportionally by the landowners alone, who are the only parties interested in this part of the commutation, (75.)

[a] See 1 Vict. c. 69. § 9. [b] See Commissioners' Report of 1st May 1838, p. 117, and also the Notes to these clauses.

These expenses, if not paid, are in every case to be recovered by a justice's warrant, (76.)

If to be borne by a land or titheowner, not having an absolute estate in fee, power is given to charge the lands or rent-charge with the expenses and interest at four per cent., so that the whole be paid off by annual instalments in twenty years, (77.)

Ecclesiastical owners may charge the amount of the expenses and interest at four per cent. in like manner on their benefices for twenty years, following the precedent of loans under Queen Anne's bounty fund;[a] but in the latter case, to prevent error, the amount is to be ascertained, and certified by the Commissioners, (78.)

CLAUSES LXXIX. LXXX.

PROVISIONS FOR TENANT PAYING THE RENT-CHARGE.

As there may be cases where the tenant dissents from the commutation, although the landlord, as owner of the lands, may agree or be compelled to commute, the landlord, where such a commutation has been effected against the wishes of his tenant, is substituted for the titheowner, during such tenant's term, and may take tithes instead; and the tenant, whether paying tithes in kind or a composition at the passing of this Act, will not be damnified otherwise than by the change of the party to whom his payments will be made, as he will be entitled to deduct the rent-charge from his rent.

[a] By the Statute for regulating of Queen Anne's bounty fund, the loans are to be repaid by annual instalments of not less than one-twentieth, with interest on the balance from time to time.

Notice of the dissent is to be given in writing, to the landlord or his agent, (79.)

Every tenant so notifying his dissent, and every tenant who may hold his lands tithe-free, or who may pay the rent-charge at any time, due upon lands which he shall take after the commutation,[a] is, if he make such payment, allowed to deduct the amount in account with his landlord for rent, (80.) This last provision secures the terms on which lands will be let for the future.

CLAUSES LXXXI.—LXXXV.

REMEDIES FOR RECOVERY OF RENT-CHARGE BY DISTRESS AND ENTRY.

If the rent-charge be unpaid for twenty-one days, power is given to distrain, after ten days' notice, as in case of distress for common rent; but the arrears that can be recovered are limited to two years, (81.)

Following the example of re-entry by a landlord, in case the rent be not satisfied by the distress, a power to enter is given after forty days' arrear; but instead of the tedious process of an ejectment, a cheaper remedy is substituted, as any judge, on affidavit of the arrears being due, may order a writ to be issued,

[a] Tenants liable to pay tithes before the commutation, and not dissenting, will have to pay rent-charge instead of tithes after the commutation is effected. Cases sometimes occur where the tenant enters on his occupation at one period of the year, *e g.* 25th March, undertaking to continue the payment of an existing composition payable yearly at another period, *e. g.* 29th September. This undertaking is given on the faith of a like arrangement being made with a future tenant on the termination of the lease; but as the rent-charge will be payable half-yearly, tenants thus situated should guard against loss, by some arrangements with their landlords for determining the compositions or otherwise. Perhaps the 1 Vict. c. 69. § 10, 11, may be usefully applied to such a case.

directed to the sheriff, to inquire and assess what is due; and on the return of the inquisition, a writ of *habere facias possessionem* may issue, as on an ordinary judgment, (82.)

The land may be held by the owner of the rent-charge till the arrears and costs, as also the cost of cultivation, be satisfied. On this being done, or whenever the landowner thinks fit, he can call for an account, by a judge's order, (which may be obtained by summons in the usual way before a judge in chambers,) and on the account being rendered, and amount of arrears and expenses satisfied, possession may be regained by issuing a writ of *supersedeas* to the writ of possession, the surplus being also paid to the owner of the rent-charge, (83.)

In the case of Quakers, it is not necessary to impound the distress, which may be made on their goods and chattels, whether on the premises or not, and no entry is to be made unless the owner of the rent-charge is unable to find sufficient distress for the arrears and costs, (84.)

The distress and entry is to extend to all lands in the parish held under the same landlord by the occupier of the lands liable to the rent-charge,[a]—a provision necessary to avoid frauds in shifting distresses, &c. &c. But no lands are to be liable for rent-charge due on land washed away by the sea, or destroyed by any natural casualty (85); such land and its owners being altogether discharged, as no owner, by Clause 69, is personally liable for the rent-charge, and the only remedies of distress and entry are lost with the land.

[a] See 1 Vict. c. 69. § 8, 9.

CLAUSES LXXXVI.—XCVII.

MISCELLANEOUS.

CLAUSE LXXXVI.

RENT-CHARGES TO BE APPORTIONED ON DEATH OR VACANCY, &c.

The Act 4 & 5 Wm. IV. c. 22, as to apportionment of rents, directs they shall be divided between heirs and executors, or incumbents vacating a living, and their successors, by proportions according to the length of time in possession, &c. These provisions are extended to the rent-charges under this Act, (86.)

CLAUSE LXXXVII.

SALE OF TITHE BARNS.

Buildings heretofore used for housing tithes being rendered useless by the commutation, are authorized to be sold, the proceeds to be applied for the benefit of the owner of the rent-charge, as the commissioners may direct, (87.)

CLAUSE LXXXVIII.

LEASES OF TITHES MAY BE SURRENDERED.

Lessees in *occupation* of tithes commuted under this Act are empowered to surrender their leases, and the commissioners may direct what, if any, compensation should pass between the lessor and lessee; but it is to be noticed, that the compensation to be given by any immediate lessor is confined to lessees at rack-rent, otherwise it would imply a return of fines, which would be manifestly unjust. On the other hand, any lessee, whether at rack-rent or not, is liable to pay compensation if he avail himself of this clause, and

throw up his lease. If the rent extend to other matters, *e. g.* land and tithes together, the rent is to be altered in proportion. Any intermediate lessor to whom a lease is surrendered, is to have the like power with regard to his lessor, (88.)

CLAUSE LXXXIX.

RESERVATION OF RIGHT TO TITHE ALREADY DUE.

The operation of the Act begins on the first day of January following the day on which the commutation shall be completed. Up to such period the tithes will be payable, (89.)[a]

CLAUSE XC.

EXCEPTIONS OUT OF THE ACT.

The Act is not to extend to the following matters, unless there be a special provision for its so extending in any voluntary agreement, approved by the commissioners, in which case they may be included.

1. Easter offerings, mortuaries, and surplice fees.
2. Fish or fishing.
3. Personal tithes, except mills.
4. Mineral tithes.
5. Tithes in London.
6. Permanent rent-charge, or payments in lieu of tithes, calculated on rents of houses or lands, in any city or town under local acts or custom.
7. Lands or tenements of which the tithes are already perpetually commuted or extinguished by Act of Parliament.[b]

[a] But see 1 Vict. c. 69. § 10, 11, which is made part of this Act, and enables parties to agree in fixing the commencement of rent-charge on the 1st April, July, or October.

[b] See Note (*) p. 87.

The exceptions are grounded, for the most part, on the general principle, that there is no land on which to charge the commutation. An attempt was made for the same reason to except the tithes of milk and calves, not produced on lands of which the tithe has been commuted, but this exception was finally rejected. The consequence will be, that the value of these tithes will be taken account of with the rest, and it will be for the landowners to consider according to what principles the resulting rent-charge shall be apportioned.

CLAUSE XCI.

EXEMPTIONS FROM STAMP DUTY.

Advertisements, agreements, awards, and powers of attorney, made, confirmed, or used, under the Act, are not chargeable with stamp duty.[a]

CLAUSE XCII.

EXEMPTION FROM POSTAGE.

The correspondence of the commissioners is postage free, if it relate solely to the execution of the Act.

CLAUSE XCIII.

PENALTIES FOR FALSE EVIDENCE, OR SUPPRESSING EVIDENCE.

Persons *wilfully* giving false evidence are to be deemed guilty of perjury;

Persons subscribing a false affidavit or declaration are to suffer penalties of perjury;

And persons refusing to give evidence, or withholding

[a] 1 Vict. c. 69. § 12, and 1 & 2 Vict. c. 64, § 2. extend this exemption to deeds and declarations of merger under the Tithe Commutation Act.

same, destroying papers, &c. are to be deemed guilty of misdemeanor.

CLAUSE XCIV.

LIMITATION OF ACTIONS AND PROTECTIONS.

The protections to commissioners and others acting under this Act are—

1. Twenty-one days' notice, in writing, of intention to bring action or suit.

2. The opportunity to tender satisfaction or amends.

3. The actions must be brought within three months from the cause of complaint, and the venue must be laid in the county where the complaint arose.

4. Defendant, if issue be favourable to him, to have full costs, (94.)

CLAUSE XCV.

The proceedings are not to be quashed for informality, or to be removable by *certiorari*.[a]

CLAUSES XCVI. XCVII.

The Act is limited to England and Wales, (96,)[b] and may be altered or repealed during the present session, (97.)

[a] Except adjudications respecting boundaries of parishes under 1 Vict. c. 69, § 2, 3.

[b] See 1 Vict. c. 69. § 14. and 1 & 2 Vict. c. 64. § 6.

AN ACT, &c.

6 & 7 WILL. IV. c. 71.

An Act for the Commutation of Tithes in *England* and *Wales*.

[13*th August*, 1836.]

WHEREAS it is expedient to amend the laws relating to tithes in *England* and *Wales*, and to provide the means for an adequate compensation for tithes, and for the commutation thereof; BE IT THEREFORE ENACTED, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for one of His Majesty's principal Secretaries of State to appoint two fit persons to be Commissioners to carry this Act into execution, and for the Archbishop of *Canterbury*, under his hand and archiepiscopal seal, to appoint one fit person to be a Commissioner to carry this Act into execution, and for the said Archbishop and Secretary of State, at their joint pleasure, to remove any one or more of the Commissioners so appointed; and upon every vacancy in the office of Commissioner some other fit person

Preamble.

Appointment of Commissioners.

shall be appointed to the said office in the same manner and by the same authority as the Commissioner whose vacancy is thereby supplied; and until such appointment it shall be lawful for the continuing commissioners or commissioner to act as if no such vacancy had occurred.

Style of Commissioners.

2. And be it enacted, that the said commissioners shall be styled "The Tithe Commissioners for *England* and *Wales*," and shall have their office in *London* or *Westminster*, and they, or any two of them, may sit from time to time, as they deem expedient, as a board of commissioners for carrying this Act into execution; and the said commissioners shall cause to be made a seal of the said board, and shall cause to be sealed or stamped therewith all agreements and awards confirmed by the said commissioners in pursuance of this Act; and all such agreements and awards and other instruments proceeding from the said board, or copies thereof, purporting to be sealed or stamped with the seal of the said board, shall be received in evidence without any further proof thereof; and no agreement or award shall be of any force unless the same shall be sealed or stamped as aforesaid.

To have Common Seal.

Awards, &c. purporting to be sealed with Seal of Commissioners, to be received as Evidence.

Commissioners to report to Secretary of State.

3. And be it enacted, that the said commissioners shall from time to time give to any one of His Majesty's principal secretaries of state such information respecting their proceedings, or any part thereof, as the said principal secretary of state shall require, and shall once in every year send to one of the principal secretaries of state a general report of their proceedings; and every year such general report shall be laid before both Houses of Parliament within six weeks after the receipt of the same by such principal secretary of state, if Parliament be

Annual Report to be laid before Parliament

sitting, or if Parliament be not sitting, then within six weeks after the next meeting thereof.[a]

Power to appoint and remove Assistant Commissioners, Secretary, Assistant Secretary, Clerks, and other officers.

4. And be it enacted, that it shall be lawful for the commissioners, from time to time, to appoint a sufficient number of persons to be assistant commissioners, and also a secretary and assistant secretary, and all such clerks, messengers, and officers as they shall deem necessary, and to remove such assistant commissioners, secretary or assistant secretary, clerks, messengers or officers, or any of them, and on any vacancy in any of the said offices to appoint some other person to the vacant office; and the persons so appointed shall assist in carrying this Act into execution at such places and in such manner as the said commissioners may direct: Provided always, that the said commissioners shall not appoint more than twelve such

[a] The first annual report of the Commissioners is dated 1st November, 1837, and states, that the Commissioners had prepared and issued forms, precedents, and instructions on the various matters arising under the Act; that the first parochial meeting was held on the 29th September, 1836, and the first agreement received by the Board on the 27th October following; that the whole number of agreements, up to the 1st November, 1837, was 652, of which 358 had been confirmed, and but 16 rejected or objected to, the remainder being under consideration. The notices for calling meetings had at that period amounted to 2707, but only 27 apportionments had been received, and 3 confirmed. The report also stated that difficulties had arisen respecting the characters of the maps, to which the official seal of the Commissioners was to be attached; but these had been overcome by the Amendment Act 1 Vict. c. 69. The Commissioners add, "that they had as yet met with no difficulties which the powers and machinery of the two Acts had not enabled them to overcome; that a very great majority of the parties with whom they had come in contact appeared satisfied with the measure, and that they saw grounds for believing that a large proportion of the tithes for England and Wales would eventually be commuted voluntarily."

For the number of notices, agreements and commutations, to the 1st October 1838, see p. 131.

assistant commissioners to act at any one time, unless the lord high treasurer, or any three or more of the commissioners of His Majesty's treasury, shall, in the case of each such appointment, consent thereto: Provided further, that the number of such clerks, messengers, and officers shall be subject to the like consent.

No Commissioner or Assistant Commissioner to sit in the House of Commons.

5. And be it enacted, that no commissioner or assistant commissioner appointed as aforesaid shall during his continuance in such office be capable of being elected or of sitting as a member of the House of Commons.

Operation of Act as to appointment of Commissioners &c. limited to Five Years.

6. And be it enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person so to be appointed, shall hold his office for a longer period than five years next after the day of the passing of this Act, and thenceforth until the end of the then next Session of Parliament; and after the expiration of the said period of five years and of the then next Session of Parliament so much of this Act as authorizes any such appointment shall cease.

Salaries of, and Allowances to Commissioners and Assistant Commissioners, Secretary and other Officers.

7. And be it enacted, that the salaries of the commissioners, the allowance to the assistant commissioners, and the salaries of the secretary, assistant secretary, clerks, messengers, and other officers to be appointed under this Act, shall be from time to time regulated by the lord treasurer or the lords commissioners of His Majesty's treasury, or any three of them: Provided always, that the salary of a commissioner shall not exceed the sum of one thousand five hundred pounds a year, nor the allowance to an assistant commissioner the sum of three pounds for every day that he shall be actually employed or travelling

in the performance of the duties of his office, nor the salaries of the secretary or assistant secretary the sum of eight hundred pounds a year; and that the salaries of the clerks, messengers, and other officers shall be in fit proportion: Provided also, that the said lord treasurer or lords commissioners may allow to any commissioner, assistant commissioner, secretary, assistant secretary, clerk, messenger, or other officer, any such reasonable travelling and other expenses as may have been incurred by him in the performance of his duties under this Act, in addition to his salary or allowance respectively.

Treasury may allow Travelling and other expenses.

8. And be it enacted, that the salaries, allowances, and travelling and other expenses of the commissioners, assistant commissioners, secretary, assistant secretary, clerks, messengers, and officers as aforesaid, and all other incidental expenses of carrying this Act into execution, not herein otherwise provided for,[a] shall be paid by the lord treasurer or the lords commissioners of His Majesty's treasury out of the consolidated fund.

Such Salaries, Allowances, and other Expenses, to be paid out of Consolidated Fund.

9. And be it enacted, that every such commissioner and assistant commissioner shall, before he shall enter upon the execution of his office, take the following oath before one of the judges of His Majesty's courts of King's Bench or Common Pleas, or one of the barons of the court of Exchequer;[b] (that is to say,)

Commissioners and Assistant Commissioners to take oath before acting.

'I *A. B.* do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, fulfil all the powers and

Form of oath.

[a] See §§ 17—30, and 73—78, inclusive, Also Report of Commissioners, 1st May, 1838, p. 127.

[b] Or if an assistant commissioner, before two justices of the jurisdiction where he shall be resident, or before any master extraordinary of the court of Chancery. 1 Vict. c. 69. § 13.

duties of a commissioner [*or* assistant commissioner, *as the case may be*,] under an Act passed in the year of the reign of King *William* the Fourth, intituled [*here set forth the title of this Act*].'

Notification of Appointment to be published in the Gazette.

And the appointment of every such commissioner and assistant commissioner, with the time when and the name of the judge or baron before whom he shall have taken the oath aforesaid, shall be forthwith published in the *London Gazette*.

Commissioners or Assistant Commissioners may summon and examine Witnesses,

10. And be it enacted, that the said commissioners, or any assistant commissioner, may, by summons under their or his hand, require the attendance of all such persons[a] as they or he may think fit to examine upon any matter brought before them or him as hereinafter mentioned relating to the commutation of tithes, and also make any inquiries and call for any answer or return as to any such matter, and also administer

and call for returns, books, &c.

oaths, and examine all such persons upon oath, and cause to be produced before them or him upon oath all books, deeds, contracts, agreements, accounts and writings, terriers, maps, plans, and surveys, or copies thereof respectively, in anywise relating to any such matter: Provided always, that no such person shall be

No person required to travel more than ten miles.

required, in obedience to any such summons, to travel more than ten miles from the place of his abode, or to produce any deeds, papers, or writings relating to the title of any lands or tithes.[b]

[a] See the 93d clause for penalties on wilful disobedience to summons, withholding or suppressing evidence, altering or destroying books, papers, and the like.

[b] This clause becomes of considerable importance, now the compulsory powers are in force, as by its means the Commissioners and their Assistants will be enabled to take oral or documentary evidence in any part of England and Wales in litigated or doubtful cases which come before them for decision.

Commissioners may delegate powers to Assistant Commissioners, except powers to be exercised under their seal.

11. And be it enacted, that the said commissioners may delegate to their assistant commissioners, or to any one or more of them, such of the powers hereby given to the said commissioners as the said commissioners shall think fit, (except the power to confirm agreements and awards, or to frame forms of agreements and other instruments, as hereinafter provided, or to do any Act herein required to be done under the seal of the said commissioners,)[a] and the powers so delegated shall be exercised under such regulations as the said commissioners shall direct; and the said commissioners may at any time recall or alter all or any of the powers delegated as aforesaid, and, notwithstanding the delegation thereof, may act as if no such delegation had been made; and all Acts done by any such assistant commissioner in pursuance of such delegated powers shall be obeyed by all persons as if they had proceeded from the said commissioners, and the non-observance thereof shall be punishable in like manner.

Acts of Assistant Commissioners to be obeyed as if proceeding from Commissioners.

Meaning of the words "Person,"

12.[b] And be it enacted, that in the construction and for the purposes of this Act, unless there be something in the subject or context

[a] Such as confirming agreements, § 27; or awards, § 52; or apportionments, § 63. The Commissioners have also the power, under Clause 65, to make inquiries beyond those already made by the Assistant Commissioners; and generally it may be said, that the final review, approval, and confirmation of every stage of the proceedings rest with the Commissioners. But according to the latter part of this section, the acts of the Assistant Commissioners are conclusive and binding on all parties, unless and until the Commissioners otherwise decide. See note to Clause 63.

[b] The interpretation clauses, 12 to 16 inclusive, must be referred to in construing every part of the Act. If any one doubt whether his case be provided for or not, he must refer to these clauses, which are made applicable to male and female, singular and plural, and the like, in order to avoid repetitions in the Act. These clauses also apply to 1 Vict. c. 69, and 1 & 2 Vict. c. 64.

"Lands," "Tithes," "Parish," "Parochial," "Land-Owner," "Tithe-Owner," as used in this Act.

repugnant to such construction, the word "Person" shall mean and include the King's Majesty, and any body corporate, aggregate, or sole, as well as an individual; and any word importing the singular number only shall mean and include several persons or parties as well as one person or party, and several things as well as one thing respectively, and the converse; and any word importing the masculine gender only shall mean and include a female as well as a male; and the word "Lands" shall mean and include all messuages, lands, tenements, and hereditaments; and the word "Tithes" shall mean and include all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real, and prescriptive and customary payments; and the word "Parish" and "Parochial" shall mean and include and extend to every parish and every extra-parochial place, and every township[a] or village, within which overseers of the poor are separately appointed under the provisions of an Act passed in the thirteenth and fourteenth years of the reign of His late Majesty King *Charles* the Second, intituled *An Act for the better Relief of the Poor of this Kingdom*, and every district of which the tithes are payable under a separate impropriation or appropriation, or in a separate portion or parcel, or which the commissioners shall by any order direct to be considered as a separate district for the commutation of tithes;[b] and the words "Land Owner" or "Tithe Owner," or "Owner of Lands" or

Townships under 13 & 14 Car. 2. c. 12.

[a] The townships here referred to are chiefly met with in the north of England, and fall under the class to which the 13th and 14th Car. 2. cap. 12, applies.

[b] By this extension of the word Parish, any peculiarity or extent of district or place may become the subject of a separate commutation, at the discretion of the commissioners; as, for instance, any part of a parish separated from the rest of the parish, or any peculiar jurisdiction, or lands subject to peculiar modes of tithing, which do not apply to

"Owner of Tithes," shall mean and include every person who shall be in the actual possession or receipt of the rents or profits of any lands or tithes, (except any tenant[a] for life or lives, or for years, holding under a lease or agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and except any tenant for years whatsoever holding under a lease or agreement for a lease for a term which shall not have exceeded fourteen years from the commencement thereof,) and that without regard to the real amount[b] of interest of such person; and in every case[c] in which any tithes or lands shall have been leased or agreed to be leased to any person for life or lives, or for years,

the rest of the parish, and which might occasion difficulties in the apportionment; but such districts can only be separated from the rest of the parish by the express directions of the Commissioners, to whom application should be made, stating the peculiarities on which the application is founded. In cases where ecclesiastical unions of parishes are treated by the Commissioners as one district, care should be taken to apportion a separate rent-charge on each portion of the union, which may be liable to a subsequent separation from the other portion. And care must be taken to avoid difficulties as to the mode of taking the consents, the subsequent custody of the documents under Clause 64, and the like. Indeed these difficulties are of a nature almost to preclude the possibility of treating such a union as a district.

[a] Tenants at a rent of two-thirds of the clear yearly value of any tenements are generally considered to be tenants at the rack, or improved rent, whose interest being temporary does not entitle them to be considered as owners. Tenants for a term of less than fourteen years, at any rent, are of the same description.

[b] The great point is to obtain the consent of those who represent the owner's interest for the time being; few consents could be obtained if the particular interest of each owner were matter of inquiry in each case of parochial agreement.

[c] Tenants at less than rack-rent, and for a term of more than fourteen years, who have, in fact, the interest of the owners during their term, whether for life or years, are allowed to join in the agreement for commutation, as if they were owners; but as their lessors, who are, in fact,

by any lease or agreement for a lease on which a rent less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, the person who shall for the time being be in the actual receipt of the rent reserved upon such lease or agreement for a lease shall, jointly with the person who shall be liable to the payment of such rent of such tithes or lands, be deemed for the purposes of this Act to be the owner of such tithes or lands; and in every case in which any person shall be in possession or receipt of the rents or profits of any tithes or lands under any sequestration, extent, elegit, or other writ of execution, or as a receiver under any order of a court of equity, the person against whom such writ shall have issued, or who but for such order would have been in possession, shall, jointly with the person in possession by virtue of such writ or order, be deemed for the purposes of this Act to be the owner of such tithes or lands.[a]

Where Parties to be deemed Joint Owners.

the reversioners, have also an interest, which ought to be represented, a joint ownership is here declared between them. There may be cases, as in some dean and chapter's leases, where there may be a series of tenants between the original lessor and the tenant at rack-rent. In such cases, upon the principle of the singular extending to the plural, each lessor and lessee falling within the definitions of this clause, and not included in its exceptions, would be deemed a joint owner. It is to be recollected that, in cases of this kind, a fine is generally paid, and hence the lessee is, *pro tanto*, a purchaser and owner. In these cases the concurrence of all such parties is necessary to constitute an owner, or the consent, &c. will not be duly given.

[a] Under 5 and 6 Wm. 4, c. 30, § 1, the perception of the rents and profits of vacant dignities or benefices is given to the treasurer of Queen Anne's Bounty, to whom they are to be paid in as full and ample a manner, as the dignitary or incumbent, if he had remained in possession of the vacant dignity or benefice, or his successor, on their induction or instalment, would have been entitled to receive the same. And for the purpose of enforcing payment, such

When Ownership of Lands or Tithes or Patronage is vested in the Crown, who to be deemed the Owner or Patron.

13. And be it enacted, that whenever the ownership of any lands or tithes to which the provisions of this Act are intended to apply shall be vested in His Majesty, the first commissioner of His Majesty's woods, forests, and land revenues for the time being, or in case such lands or tithes shall be vested in His Majesty in right of the Duchy of *Lancaster* or of the Duchy of *Cornwall*, the Chancellor of the Duchy of *Lancaster* or the officers of the Duchy of *Cornwall*, entitled to grant leases of lands parcel of the Duchy of *Cornwall*,[a] shall for the purposes of this Act be substituted instead of the owner of such lands or tithes respectively; and whenever the patronage of any benefice to which the provisions of this Act are intended to apply shall be vested in His Majesty, the lord high treasurer or first lord commissioner of the treasury for the time being, where the value of such benefice is above the yearly value of twenty pounds in the King's books, and where such value is of or below the yearly value of twenty pounds in the King's books, the lord chancellor or lord keeper or first lord commissioner of the great seal for the time being, shall for the purposes of this Act be substituted instead of the patron: Provided nevertheless, that if such patronage is vested in His Majesty in right of the Duchy of *Lancaster*, the Chancellor for the time being of such Duchy shall for the purposes of this Act be substituted instead of the patron.

treasurer is to have all the legal rights, &c., which would have belonged to such successor. Hence the treasurer of Queen Anne's Bounty in these cases is enabled to act as tithe or land owner (as the case may be) under this Act; but he cannot act as patron, the right of patronage being reserved to the true patrons by §§ 4 and 5 of the same Act.

[a] 1 and 2 Wm. 4. c. 5.

When the same Person is Owner of Lands and Owner of Tithes, or Patron, he may be dealt with in each character.

14. And be it enacted, that whenever any person shall be at the same time owner of any lands and owner of any tithes comprised within any agreement to be executed pursuant to the provisions of this Act, or besides being owner of any lands or of any tithes, shall also be patron of the benefice to which the tithes in question may belong, such person, in relation to such agreement, may act and be dealt with in each of the several characters so borne by him as aforesaid.[a]

In case Patron or Owner is under legal disability, who to act.

15. And be it enacted, that whenever the patron of any benefice, or the owner of any lands or tithes to which the provisions of this Act are intended to apply, or any person interested in any question as to any tithes, shall be a minor, idiot, lunatic, feme covert, beyond the seas, or under any other legal disability, the guardian, trustee, committee of the estate, husband, or attorney respectively, or in default thereof such person as may be nominated for that purpose by the commissioners, after due inquiry shall have been made by them as to the fitness of such person, and whom they are hereby empowered to nominate under their hands and seal, shall for the purposes of this Act be substituted in the place of such patron, owner, or person so interested.[b]

Agent may be appointed by Power of Attorney to carry provisions of

16. And be it enacted, that it shall be lawful for any landowner or titheowner, by a power of attorney given in writing under his hand, to appoint an agent to act for him in carrying into

[a] That is, his consent reckons in each majority, and as patron, if he have also the patronage, as the case may be.

[b] The power here given to the commissioners will apply to a very numerous class of cases, where there is no *legally appointed* guardian, or where no inquisition of lunacy has been found, and the like. In such cases it will rest with the commissioners to say with what evidence of the fact of lunacy, &c., they will be satisfied.

execution the provisions of this Act; and all things which by this Act are directed to be done by or with relation to any person,[a] may be lawfully done by or with relation to the agent so duly authorized of such person; and every such agent shall have full power, in the name and on behalf of his principal, to concur in and execute any agreement, and to vote on any question arising out of the execution of this Act; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted; and the power of attorney under which the agent shall have acted, or a copy thereof authenticated by the signature of two credible witnesses,[b] shall be appended to every agreement executed by any such agent, and shall be sent with it to the office of the commissioners as hereinafter provided; and any such power of attorney may be in the form following:

Act into execution.

Principal bound by acts of such Agent.

'I *A. B.*, of, &c. do hereby appoint *C. D.* of, &c. to be my lawful attorney to act for me in all respects as if I myself were present and acting in the execution of an Act passed in the sixth and seventh years of His present Majesty, intituled [*here insert the title of this Act.*] (Signed) *A. B.*'

Form of Power.

17.[c] And be it enacted, that any one or more of the landowners or titheowners, whose interest

Parochial Meetings may be called, at

[a] A patron may give his consent by attorney under this clause. (See interpretation of the word "person," Clause 12.)

[b] The agent should keep the power for future occasions, and append a copy, attested by two witnesses, to the agreement; this power, which is sufficiently short and simple to be written on half a sheet of letter paper, is exempt from stamp duty. (See Clause 91.) The commissioners require an attestation by some person (not the wife of the party giving the power), who should add his or her occupation and address in the usual way.

[c] This is the first clause enabling parties to set the Act in motion. Any person in a parish (according to the defi-

which Owners of Two-thirds in value of lands and tithes may agree on the total sum to be paid to the Tithe Owners, which

respectively shall not be less than one-fourth part of the whole value of the lands subject to tithes, or one-fourth part of the whole value of the tithes of any parish in *England* or *Wales*, may call a parochial meeting of landowners and tithe-owners within the limits of the parish, by notice

nition of "person" and "parish" in Clause 12), who may wish to commute, must, if his own interest in the land or tithes does not amount to so much, obtain the assent of as many of his neighbours as will make their joint interest amount to one-fourth of the value in lands, or of the great and small tithes added together, to join him in signing the notice here required for calling a general meeting of landowners and titheowners, with a view to effect the commutation. The notice must remain fixed for twenty-one days on the church doors, or some other public place for giving notice in the parish; and also be advertised not less than twice in some county paper, the expense of which must be borne by the persons calling or attending the meeting. Any agreement made at this meeting, or at some adjournment of it, must be signed by the persons having two-thirds interest in the lands, two-thirds in the great tithes, and two-thirds in the small tithes; and if not signed at the meeting, it may, by the 18th clause, be signed within six months afterwards; but care must be taken that the first signature is affixed at the meeting where a provisional agreement is determined on. When signed by parties having sufficient amount of interest, it becomes an agreement for the commutation, which binds the rest of the parish. The form of this notice may be had on applying to the commissioners.

The term "parochial agreement" is used throughout the Act, as denoting the voluntary process. In the Bill originally introduced, there was a power for individuals to commute, but it will here be seen that no commutation can be effected except by a whole parish or district, as defined in Clause 12; nor can a commutation be effected of the great tithes alone, or of the small tithes alone. Both must be included, although the agreement may treat them both collectively, and fix one sum for both united, where both, for instance, belong to the same tithe-owner; or the agreement may provide that one sum be paid for great tithes, and another for small tithes, where they belong to different titheowners, or where the meeting think it desirable to have the two rent-charges kept distinct. But where the tithes in a parish are held in separate parcels, the commissioners can declare them separate districts, and allow the parties to make separate agreements accordingly.

thereof in writing under his or their hand, to be affixed at least twenty-one days before such meeting on the principal outer door of the church, or in some public and conspicuous place within the limits of the parish, and to be twice at least during such twenty-one days inserted in some newspaper generally circulated in the county in which such parish is situated, for the purpose of making an agreement for the general commutation of tithes within the limits of such parish; and every landowner and titheowner attending such meeting shall bear his own expenses of attendance; and the landowners and titheowners who shall be present at any such meeting called as aforesaid, and whose interest in the lands and tithes of the parish respectively shall not be less than two-thirds of the lands subject to tithes, two-thirds of the great tithes and two-thirds of the small tithes of the parish, may proceed to make and execute a parochial agreement for the payment of an annual sum by way of rent-charge, variable as hereinafter provided, instead of the great and small tithes of the parish collectively, or instead of the great tithes and small tithes severally, to the respective owners thereof in the said parish; and every agreement so made and executed, and confirmed in manner hereinafter mentioned, shall be binding on all persons interested in the tithes or lands subject to tithes of the said parish.[a]

Agreement shall bind the whole Parish.

Twenty-one days' notice of meeting to be given, and to be twice advertised.

Expenses to be borne by parties attending Meeting.

18. And be it enacted, that the majority of such landowners and titheowners present at every such meeting shall elect a chairman, who shall forthwith proceed to ascertain[b] the interest

Provisional Agreements may be made at the Parochial Meetings.

[a] Thus where there are numerous titheowners, and only a small number sign, all are bound if those who sign have the requisite amount of interest; and the agreement is valid, though not signed by the other titheowners, even though they are set forth as parties to such agreement.

[b] It is advisable that the chairman should certify, in

of the landowners and titheowners then present in person or by their agents; and in case it shall thereupon appear that the persons present at such meeting have not a sufficient interest in the premises as aforesaid to make and execute such an agreement which shall be binding on all persons interested therein, it shall be lawful notwithstanding for any number[a] of the persons then present to make and execute a provisional agreement for the commutation of tithes of the like form and tenor; and every such provisional agreement which shall be executed within six calendar months from the day[b] of the first making thereof by the landowners and titheowners whose interest in the lands and tithes of the parish shall not be less than two-thirds of the lands subject to tithes, two-thirds of the great tithes and two-thirds of the small tithes of the parish respectively, shall be as binding as if executed by all the parties thereto at the meeting at which the agreement was first made.[c]

to be binding if executed within six months.

writing, that the interest has been duly ascertained, and the certificate should be annexed to the agreement, and so transmitted with it to the commissioners. It will be seen by the next clause that this interest is to be ascertained by the poor-rate.

[a] As it is here stated that any number of those present may execute a provisional agreement, which may afterwards become a due parochial agreement by having signatures to the requisite amount of interest added to it, it does not seem necessary that the question, whether there should be a provisional agreement or not, should be put to the meeting. The act is merely that of the individuals, and the expense of preparing such an agreement would fall on them, if they failed in making it perfect. But it would be desirable in such a case to have the meeting adjourned to a distant day, and so from one period to another during the six months, or all the previous notices, labour, and expense, may be wasted.

[b] That is, the day of the first signature being attached, which must be at a meeting. See Clause 21.

[c] It is very desirable that as much communication as possible should take place between the parties previous to the meeting, so that the way to a fair arrangement may be

19. Provided always, and be it enacted, that the proportional interest of the owners of such lands or tithes,[a] so far as relates to their power to make any such agreement or provisional agreement, or to give any notice to the commissioners or assistant commissioners as hereinafter provided, shall be estimated according to the proportional sum at which such lands or

Proportional interest in Lands and Tithes, how to be estimated for the purposes of this Act.

smoothed, and difficulties and distrust on either side avoided. Thus the titheowner should be prepared to state what his receipts for the seven years ending Christmas 1835 (see Clause 37) have been, although they are merely the basis of a compulsory commutation; and generally it is a good and safe procedure to be prepared to state to the other side every particular of which the commissioners would compel the statement or proof, if called on to exercise their powers. Each party thus meeting the other in an open and candid manner, the business of voluntary commutation is much facilitated, and the mode of proceeding plain and simple. The chairman should first call for the assessment, and having taken down the names of those present, ascertain the amount of their assessment in respect of any titheable property of which they are owners. The next point is to ascertain the gross assessment on titheable property in the parish, which is found by ascertaining and deducting the amount of assessment on houses and other property not liable to tithes, or in any way exempted by modus or otherwise. On the amount thus reduced the calculation of interest, on which the validity of the meeting depends, is to be made; when this is ascertained, the chairman should call on the parties who summoned the meeting to open the business; and if terms cannot at once be acceded to, every facility for discussion and inquiry should be given, and if needful, an adjournment made, to prevent the expense of notices, &c., being thrown away. In cases of adjournment, the parties who wish for time to consider any proposition made to them, should (if their number admit of it) appoint a committee or deputation from their own body, to take the necessary steps for its consideration, and thus be prepared to make the adjourned meeting conclusive.

[a] It will be convenient at every parochial meeting to request the attendance of the overseers, and to procure the poor-rate books, so as to put the assessment of each person present opposite to his name in the minutes of the parochial meeting, and opposite his signature to the agreement, and to add a memorandum of the total amount of assessment of the titheowners and landowners subject to tithes.

tithes shall be rated to the relief of the poor, or, if there shall be no such rate, according to the rules by which property of the same kind is by law ratable to the relief of the poor.

Meeting may be adjourned.

20. And be it enacted, that in case an adjournment of the said meeting for any cause shall be desired by a majority of the persons attending such meeting, the chairman shall adjourn the meeting to any time[a] and place then by him to be declared, and so from time to time, in case the same shall be in like manner desired by a majority of the persons attending such meeting; and notice of every adjourned meeting shall be given under the hand of the chairman, and shall be affixed in a conspicuous place on the outside of the building in which such meeting or the last adjournment thereof shall have been holden; and the like order of proceeding shall be observed at any such adjourned meeting, and every thing done at any such adjourned meeting shall be as valid as if done at the original meeting.

Notice of adjournment.

Form of Parochial Agreement.

21. And be it enacted,[b] that every such agreement shall bear date on the day on which

[a] The twenty-one days' notice is not necessary in the case of an adjourned meeting, as the chairman may adjourn to any time, and so may adjourn to another hour in the same day, if the meeting see fit.

[b] The form will be supplied by the commissioners, but it is of great importance to see that all the requisites of this clause are complied with: They are—

1. Date of first signature to agreement.
2. Particulars of land subject to tithes.
3. Their statute measure.
4. Their mode of culture.
5. Whether subject to any, and what moduses, &c., and the lands covered thereby.*

* This point should never be omitted; as, if it be, much confusion and even ground of appeal may be left open to

the[1] first signature is attached thereto, and every such agreement or some schedule thereunto

6. To distinguish between great and small tithes.
7. And in what right each titheowner claims.*
8. Exemptions and particulars of land exempt.†
9. Gross amount, in words at length, of proposed rent-charge for tithe.
10. The like for moduses, &c. if any.
11. Distinguishing the amount on every parcel of land payable to each titheowner.‡
12. The amount payable in different rights to the same owners.
13. Or such other particulars as the commissioners shall direct.§

Nor must the parties to the agreement omit the ordi-

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parties disputing the modus, or the boundary of the lands over which it runs.

* It is not an unfrequent error to treat as tithe-free, lands of the tithes of which the owner, by purchase or demise, has become the proprietor. In such cases, the landowner is also titheowner, and must be dealt with as such, unless he adopt the simple mode of merger allowed by Clause 71, and 1 & 2 Vict. c. 64.

† As where the titheowner occupies the titheable lands, in which case the value of the tithes, in the absence of any agreement to the contrary, must be calculated as if taken in kind; and the like in the case of glebe, whilst in the hands of an incumbent, or other cases of entire or partial exemption. See Clauses 24, 38, 42, 43, 44, and four following clauses, where these moduses and exemptions are protected.

‡ These several distinctions are intended to meet the several cases of great or small tithes, portions of tithes, and the like; and by the Amendment Act, 1 Vict. c. 69. § 9, a power is given to interested parties to fix their rent-charges on particular lands in certain cases.

§ By 1 Vict. c. 69. § 4, 5, 6, several of the minute particulars above set forth may be omitted in voluntary apportionments in certain cases. Hence it has been thought that they might be dispensed with in agreements with the sanction of the commissioners; and the power given to the latter to require other particulars would also seem to imply a discretion in dispensing with such of those here enumerated, as they might see fit. See also Clause 66, which protects an agreement from impeachment on account of informalities. But a deviation from particulars so minutely set forth, must at all times be attended with so much doubt, that it would be scarcely safe to rely on an agreement from which they are omitted.

annexed shall set forth all the lands of the said parish which are[2] subject to the payment of any kind of tithes, and also the true or estimated quantity in statute measure[3] of land subject to tithes within the parish, which shall be then cultivated[4] as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise; and shall also set forth whether any modus[5] or composition real, or prescriptive or customary payment, shall be payable instead of all or any of the tithes of the said parish, and which lands or tithes respectively are covered thereby; and shall also set forth which of the said tithes, moduses, compositions, or payments are payable to the titheowner, or if there is more than one titheowner[6] to each of the several titheowners in the said parish, distinguishing[7] in what right every such titheowner is entitled to such tithes, and shall also set forth whether any and which of the lands of the said parish are or have been under any and what circumstances[8] exempt from the payment of any and what tithes; and such agreement shall also state in[9] words at length the amount of the sum or sums agreed to be paid (subject to variation as hereinafter provided) instead of the tithes of the lands comprised in

nary points required in a document of this importance—such as the duly signing it; specifying whether the party signing be a landowner or titheowner; what his proportion of interest is, &c. The agreement should also purport to be between the several parties required by the Act, and that it is made under its provisions—that the meeting has been duly called by landowners or titheowners of one-fourth interest in the lands or tithes in the parish—that it was duly advertised, and otherwise duly appointed, and the respective interests of the parties duly estimated and ascertained, according to the proportional sum in which such tithes or lands are rated (or liable to be rated, as the case may be) to the relief of the poor in the said parish, &c.*

* The commissioners have circulated general forms of agreement, with directions for their use.

the said agreement, and instead of all moduses[10] and compositions real, prescriptive and customary payments (if any), payable in respect of such lands, or the produce of such lands or any of them; distinguishing, if there is more than one titheowner, the sum payable[11] to every such titheowner, and where the tithes of different lands in the same parish are payable to different titheowners, or to the same titheowner[12] in different rights, distinguishing the sum payable in respect of such different lands; and every such agreement shall also state[13] all such other particulars as the commissioners shall by any order from time to time require to be inserted in such agreements.

Commissioners to frame and circulate Forms of Agreements, &c. to Churchwardens and Overseers, requiring same.

22. And be it enacted,[a] that the commissioners shall frame and cause to be printed, as soon as conveniently may be after their appointment, forms of notices and agreements, and such other instruments as in their judgment will further the purposes of this Act, and supply all or any of such forms to the churchwardens and overseers of any parish who may require the same, or to whom the commissioners may think fit to send the same, for the use of any landowner or titheowner desirous of putting this Act into execution.

Commissioner or Assistant Commissioner

23. And be it enacted, that any commissioner, or assistant commissioner, if the commissioners

[a] By the 92d clause, letters, &c. sent for the purposes of this Act may go free of postage; and by the regulations of the post office, packets not exceeding three feet in length may also be sent free under this clause. The applications for forms, it will be observed, must be made through the parochial authorities, and the letters must be directed to "The Tithe Commissioners for England and Wales, London," otherwise they are subject to postage. (See note as to "forms," p. 136.) In every case it is desirable to submit any document or form to the Commissioners before final adoption by a meeting or by individuals.

may attend to advise terms of Agreement.

shall think fit, may attend any such meeting for the purpose of taking part in the discussion and advising on the terms of agreement; but no commissioner or assistant commissioner, during the time that he is actually attending such meeting for that purpose, shall have any of the powers herein given to the commissioners in case of an award or apportionment by the commisisoners as hereinafter provided.[a]

Suits and differences may be referred to Arbitration.

24. And be it enacted,[b] that if any suit shall be pending touching the right to any tithes, or if there shall be any question as to the existence of any modus or composition real, or prescriptive or customary payment, or any claim of exemption from or non-liability to tithes, under any circumstances, in respect of any lands or any kind of produce, or touching the situation or boundary of any lands;[c] or if any difference shall arise, whereby the making and executing of any such agreement shall be hindered, it shall be lawful for the owners, or, if there shall be no

[a] It is desirable to request the attendance of a commissioner in any case where difficulty is anticipated; and when it arises unexpectedly, it is important to adjourn, for the purpose of having such assistance.

[b] This clause relates to all cases of disagreement or dispute pending between landowners and titheowners at the time of the meeting, even before the compulsory powers are put in force, and will enable the disputing parties to refer their suits and differences at once to arbitration. The proviso puts the commissioners in the place of the reversioner, in case he be not a party to the suits, leaving it in their discretion whether he shall be made a party to the reference or not. It would seem that in cases of this sort, they may originate any inquiry they may see fit, but otherwise they can only deal with points raised and submitted to them by the parties to the reference. It would be, in many cases, important to appoint a commissioner or assistant commissioner as referee or arbitrator.

[c] By 1 Vict. c. 69. § 1, 2 and 3, special powers are given to the Commissioners for ascertaining parochial boundaries. In case of unsuccessful appeal by certiorari against their decision, their costs are to be paid by the appellant.

owner actually in possession, for the persons claiming to be the owners of the lands and tithes respectively, being parties to such suit or difference, to submit the same to reference by any writing under their respective hands, containing an agreement that such submission shall be made a rule of any of His Majesty's courts of record, upon such terms of reference as the parties may agree upon; and the decision of the arbitrator or arbitrators named in the said reference shall for the purposes of this Act be final and conclusive on all persons: Provided nevertheless, that no person, being owner of an estate in land or tithes, less in the whole than an immediate estate of fee-simple or fee-tail, shall be empowered to submit to any such reference so as to bind any person in remainder, reversion, or expectancy without the consent of the commissioners; and that it shall be lawful for the commissioners, if they shall think fit so to do, but not otherwise necessary, to direct that any person in remainder, reversion, or expectancy of an estate of inheritance in the said lands or tithes, or any other person whom they shall deem to be interested therein, shall be made a party to such reference.[a]

Submission to reference of Persons not having Estate in fee, not binding on Reversioner without consent of Commissioners.

Reversioner, &c. to be made a party if the Commissioners see fit.

25. And be it enacted, that every agreement for the commutation for a rent-charge of the tithes of any lands which shall be pending at the time

Agreements pending at the time of the

[a] Although it is here stated that the decision of an arbitration under this clause is to be final, yet as the Commissioners are to satisfy themselves in every particular before confirming agreements, awards, or apportionments, it would seem that they have the power to examine into the decisions under these awards, so far as to withhold their confirmation until they are satisfied. (See Clause 52. But see also note [b] Cl. 46, p. 46.) In such case their power would be analogous to that of the court in which any such decision is made a rule, which can always entertain such applications, and has discretion to set aside or amend an award. (See note (a) to Clause 63, p. 66. Also see Clause 65.)

passing of this Act, if completed and confirmed by the Commissioners, to be as valid as parochial Agreements.

of the passing of this Act, and which shall be executed before or within six calendar months after the passing of this Act, by the landowners and titheowners, or persons claiming to be such owners, whose interest in the said lands and tithes shall not be less than two-thirds of the said lands, two-thirds of the great tithes, and two-thirds of the small tithes of the said lands, and which shall be confirmed by the commissioners, under their hands and seal, in the manner hereinafter provided for the confirmation of any parochial agreement, shall be as valid, and the rent-charge agreed to be paid by any such agreement shall be apportioned and charged, as hereinafter provided, among and upon the said lands, as if the agreement had been made and executed at a parochial meeting.

Consent of patron to be given to every Agreement for Commutation of Ecclesiastical Tithe.

26. Provided always,[a] and be it enacted, that in every case in which any tithes shall belong to any ecclesiastical person in right of any spiritual dignity or benefice, no agreement for the commutation of such tithes made and executed under this Act shall be deemed to be executed by the owner of such tithes, unless such consent thereto be given as is hereinafter mentioned; (that is to say,) in the case of an archbishop or bishop, the consent of the Crown, signified by the lord high treasurer or first lord commissioner of the treasury; and in case of the incumbent of any other benefice or ecclesiastical dignity, the consent of the patron or person entitled to present to such benefice or dignity, in case the same were then vacant;[b] and every such consent shall be

[a] This consent is rendered necessary to prevent improvident bargains by those who have a mere temporary interest in the tithes. (See also Clause 28.)

[b] By 12 Anne, st. 2, c. 14, Roman Catholic patrons are disabled from presenting, and their right devolves on the two Universities of Oxford and Cambridge; the counties in which each has the right to present being specified in 3 & 4 Jac. 1,

given under the hand of the person giving the same, and shall be annexed to the agreement, and taken to be part of the execution thereof.

Agreement to be confirmed by the Commissioners,

27. And be it enacted, that every such agreement,[a] as soon as may be after it shall have been executed by a sufficient number of landowners and titheowners whose interest in the lands and tithes of the parish respectively shall not be less than two-thirds of the lands subject to tithes, two-thirds of the great tithes, and two-thirds of the small tithes, shall be sent by the chairman of the meeting, or by the person in whose custody it shall then be, to the office of the commissioners, and the commissioners, by themselves, or by some assistant commissioner, shall cause inquiry to be made, and shall require such proof as will be satisfactory to them, whether or not the agreement has been made without fraud or collusion, and whether or not it ought to be confirmed; and if they shall be satisfied that it ought to be confirmed, the commissioners shall confirm the agreement under their hands and seal, and shall add to such agreement the date of the confirmation, and shall publish the fact of such confirmation and the date thereof within the parish, in such manner as to them shall seem fit; and every such confirmed agreement shall be binding on all persons interested in the said lands or tithes.[b]

on proof that it is made without fraud or collusion.

c. 5, §§ 19, 20; and by 10 Geo. 4, c. 7. § 17, presentations of the like kind connected with offices in the gift of the Crown, devolve on the Archbishop of Canterbury.

[a] After the agreement is fully signed, no time should be lost in forwarding it for confirmation, so as to enable the Commissioners to make inquiries, and obtain evidence of the fairness of the agreement, according to the provisions of this clause. Until confirmation the agreement is of no force. After confirmation the valuation and apportionment take place under Clauses 33 and 34. But in every case it is desirable to forward the draft to the Commissioners for approval or suggestions for amendment before engrossment. By such means much expense and difficulty may be avoided.

[b] This includes persons in reversion, remainder or

Before Confirmation of Agreement as to Ecclesiastical Tithes, notice to be sent to the Bishop.

28. Provided always, and be it enacted, that before the commissioners shall confirm any such agreement relating to tithes belonging to any ecclesiastical person in right of any spiritual dignity or benefice, they shall communicate the same to the bishop of the diocese for his observations and opinion; and no such agreement shall be confirmed by such commissioners until four weeks shall have elapsed from the date of the transmission of such agreement to such bishop, unless the said bishop shall sooner signify his approbation of such agreement to the said commissioners.

Parochial agreement may

29. And be it enacted,[a] that any such parochial agreement may be made in manner and form

expectancy, and makes the agreement final and conclusive. By Clause 65, the commissioners may give notice to the reversioners, and remainder-men, or other interested persons, if they see fit. Although the act of confirmation is thus conclusive on the parties, and cannot, by Clause 66, be impeached by reason of any mistake or informality therein; yet as the further stage of appertionment has yet to be gone through, the agreement would seem to be open to correction by the commissioners, if any substantial error in the details be discovered by them; but there is no appeal for the parties, and the gross amount of rent-charge would seem to be irrevocably fixed as to all lands actually included in the agreement.

[a] This provision has been introduced to enable any incumbent to add twenty acres to his glebe. But it is to be observed that such an agreement in this stage of the commutation must be *parochial*, that is, made with the consent of all the parties to the agreement, and not a mere private arrangement with an individual; and the residue of the rent-charge, after deducting the rent-charge value of the twenty acres, must be apportioned over all the other lands in the parish except the land so given to the incumbent. (See note (b), p. 64.)

Lay-impropriators are not included in this provision, but left to their rights, as they may exist independent of the Act.

The form of the agreement is left to the commissioners, whose consent and confirmation are essential to its validity; and by the following clause it will be seen that they must be satisfied of the title and every other particular so as to

aforesaid for giving to any ecclesiastical owner, in right of any spiritual benefice or dignity, of any tithes, or of any rent-charge for which such tithes shall have been commuted, any quantity not exceeding in the whole twenty imperial acres of land, by way of commutation for the whole or an equivalent part of the great or small tithes of the parish, or in discharge of or exchange for the whole or an equivalent part of any rent-charge agreed to be paid instead of such tithes, but subject in every case to the provisions hereinafter contained; and every such agreement shall be made in such form and contain such particulars as the commissioners shall in that behalf direct, specifying the land whereof the tithes or rent-charge for which such tithes shall have been commuted shall be the subject of such agreement, and giving full and sufficient descriptions of the quantity, state of culture, and annual value of the land proposed to be given in exchange for such tithes or rent-charge: Provided always, that the same consent and confirmation shall be necessary to any such agreement as in the case of an agreement for a rent-charge; and that in case the said agreement shall not extend to the whole of the tithes of the parish, an agreement or award as hereinafter provided may and shall be made for the payment of a rent-charge in satisfaction of the residue of the said tithes; and such rent-charge when agreed upon or awarded, or the residue thereof, shall be apportioned, in manner hereinafter provided, upon

be made for giving twenty acres of land to Ecclesiastical Titheowner, by way of Commutation.

Particulars to be specified in such Agreement.

ensure a fair agreement, and all the costs are to be borne by the landowner.

The twenty acres must be of imperial measure, and in no case exceed that number.

If the parish desire to give common land, the consent of the lord of the soil and of every landowner must be obtained, as it is not a case where two-thirds would bind the remainder. (See also Clause 62.)

all the lands of the parish subject to the payment of tithes, unless otherwise agreed upon by the parties to the said parochial agreement, except the land so given by way of commutation, in like manner as if no agreement for giving land had been made: Provided also, that the land so given shall be free from incumbrances, except leases at improved rent, land tax, or other usual outgoings, and shall not be of leasehold tenure, nor of copyhold or customary tenure subject to arbitrary fine or the render of heriots.

Commissioners to satisfy themselves of Title, &c.

30. And be it enacted, that in every case in which any such agreement for giving land shall be so entered into, the commissioners shall satisfy themselves in such way and by such evidence as they shall see fit, of the title to the land proposed thereby to be given in exchange for such tithes or rent-charge, and that the same are of the description and value set forth in such agreement, and that such agreement is conformable in every respect to the provisions hereinbefore contained respecting the same; and the expense attending every such agreement for giving land and the confirmation thereof, and of investigating the title to the land, shall be borne by the owners of land liable to the payment of tithes within the parish, in such proportions as they may agree, or in default of agreement, as the commissioners may direct.

Expense to be borne by Landowners.

Agreement for Land when confirmed to operate as Con-

31. And be it enacted,[a] that such agreement for giving land, confirmed by the said commissioners, shall operate as a conveyance of such

[a] The expense of a conveyance is saved by this clause, but the agreement is not binding till confirmed; the clause also declares the uses of the agreement by making them of the like nature with the tithes or rent-charge for which the land is given.

land to the owner of such tithes or rent-charge, and the land so conveyed shall thereupon vest in and be, and be deemed to be, holden by such person or persons, and upon the like uses and trusts, in every respect, as the tithes or rent-charge in commutation or exchange for which the same shall have been given shall be vested and holden; and for the purpose of making and completing any such agreement, the provisions of this Act respecting persons under legal disability shall apply to every person, party to such agreement, or in whom any such land shall be vested, and whose concurrence or consent may be necessary to the perfecting thereof, or of the title to such land, as fully as if the same had been here repeated and re-enacted.

Conveyance to like uses as Tithes or Rent-charge.

32. And be it enacted,* that at the said meeting, or at some adjournment thereof, or at some other parochial meeting to be called in

Appointment of Valuers by Landowners.

* The gross amount of rent-charge having been agreed on by the landowners and titheowners jointly, the landowners are empowered to choose a valuer, or any even number of valuers, to apportion this amount amongst themselves, but the concurrence of two majorities is necessary to this appointment; one in respect of the number, and the other in respect of the interest of the landowners. The titheowners have no such interest in this apportionment as to make their interference or concurrence necessary. It was suggested during the discussions upon the Bill, that if the landowners and titheowners agreed without the intervention of valuers, the delay and expense consequent on the appointment might be saved; but as the minority in the parish who are not parties to the agreement are still bound by it, it is essential that some competent valuers should be chosen who can determine or give evidence of the propriety of the apportionment, and of the fidelity of the map or plan to be annexed to the latter. It would be proper to have this appointment of the valuers in writing, and the majorities duly ascertained by a minute of those present at the meeting, and of their rated rental as appearing by the poor-rate under Clause 19. In case the parties agree amongst themselves on an apportionment, it is competent for them to appoint some of their own body

like manner, either before or after the confirmation of the agreement, the owners of lands subject to tithes in the said parish, or their agents present at the meeting, may appoint a valuer or valuers; and in case the majority in respect of number and the majority in respect of interest shall not agree upon the appointment, then they shall appoint two or such other even number of valuers as shall be then agreed on by such landowners; half of such number to be chosen by a majority in respect of number, and the other half by a majority in respect of interest of such landowners then present.

Valuers to apportion the Rent-charge.

33. And be it enacted, that as soon as may be after the choosing of such valuer or valuers, and after the confirmation of the said agreement, the valuer or valuers so chosen shall apportion[a]

to be valuers, and thus save future expense and difficulty in fulfilling the requirements of the Act. But in this, as indeed in any case, it must be recollected that the commissioners have the power to consider the fairness of the principles agreed on by the majority; any person in the minority, or absent from the meeting, having a right of appeal to them. If in six months the valuation and apportionment shall not be completed by valuers so chosen, the commissioners may apportion. (See Clause 54.)

[a] No apportionment can be made but by the valuers duly appointed, or the commissioners when their interference is necessary; but the meeting may determine the principle on which the valuers are to proceed. It has been objected to in former plans of commutation, that they fixed an occupier of highly cultivated land with a high tithe, and the reverse. By this provision, which brings not only the titheable produce, but the productive quality of the land, before the notice of the meeting or valuers, the apportionment may be taken with perfect fairness to all, and equalize the tithe according to what the land is capable of producing throughout the whole parish; *e. g.* Suppose the gross rent-charge or tithe has been agreed upon at 500*l.* per annum, the parish has to find this amount for the titheowners, and the valuers may, under the direction of the landowners, allot to each a proper quota, according to the fair average titheable value of his land,—no matter what may be the nature of the tithe to which it may be at

the total sum agreed to be paid by way of rent-charge instead of tithes, and the expenses of the apportionment, amongst the several lands in the said parish, according to such principles of apportionment as shall be agreed upon at the meeting at which the valuer or valuers shall be chosen; or if no principles shall be then agreed upon for the guidance of the valuer or valuers, then, having regard to the average titheable produce and productive quality of the lands, according to his or their discretion and judgment, but subject in each case to the provisions hereinafter contained, and so that in each case the several lands shall have the full benefit of every modus[a] and composition real, prescriptive and customary payment, and of every exemption from or non-liability to tithes relating to the said lands respectively, and having regard to the several tithes to which the said lands are severally liable: Provided that it shall be lawful for the said valuers, when an even number is chosen, by any writing under their hands, to appoint an

According to principles agreed on by Landowners, or having regard to Produce and quality of Lands.

Moduses and Exemptions to be respected.

that time liable.* The landowners can also, if they please, relieve the poorer tithe-payers, by ascertaining the amount of the tithes payable by them, and add them to the gross amount of tithes; as also the Easter offerings, mortuaries, and surplice fees, under a special provision to that effect if they see fit, such a power being reserved in Clause 90. The few pounds paid for this kind of tithes, though important to the poorer clergy, whose income often depends on these tithes, would not be felt when thus apportioned over the whole parish.

[a] That is, the proportion of rent-charge on lands entitled to a modus will be calculated on the money value of the modus. There are some shifting moduses which may form the subject of an average; as, *e. g.* where land pays a modus whilst in pasture, but becomes subject to tithe if broken into tilth. (See also Clause 44.)

* But where *lands* are entitled to an exemption by reason of a specific modus, or otherwise, this exemption is to be respected. Where the exemption depends on the mode of culture, *e. g.* whether grass or arable, the case will be treated as a shifting modus. (See next note.)

total value of Tithes in any Parish in which no previous Agreement made.

manner hereinafter mentioned, at such time and in such order as to them shall seem fit, either by themselves or by some assistant commissioner, to ascertain and award the total sum to be paid by way of rent-charge instead of the tithes of every parish in *England* and *Wales* in which no such agreement binding upon the whole parish as aforesaid shall have been made and confirmed as aforesaid: Provided nevertheless, that if any proceeding shall be had towards making and executing any such agreement after the commissioners shall have given, or caused to be given, notice of their intention to act as aforesaid in such parish, the commissioners may refrain from acting upon such notice if they shall think fit, until the result of such proceeding shall appear.

To refrain from acting if notice given of intention to make Agreement.

Value of Tithes to be calculated.

37.[a] And be it enacted, that in every case in which the commissioners shall intend making

agreements, under the impression that the power of the commissioners would, as of course, be exercised immediately after the date here fixed. But when it is considered how many thousand parishes there are, in which no agreements have yet been made, and that until the commutation is effected, the law of tithes is in force to its full extent, it will be seen that with every desire to discharge this part of their duty with all possible despatch, much time must elapse before any parish can calculate on their intervention. In a circular issued by the commissioners on the 27th August, 1838, they have declared that so long as voluntary agreements proceed at the pace at which they have lately proceeded, they will only interfere in the four following cases:—

1. Of those in which litigation is in progress.
2. Of those in which tithe has been taken in kind, prior to the appearance of their circular.
3. Of cases in which they are requested by both landowners and titheowners to interfere.
4. Of cases in which an incumbent has been recently appointed, or may hereafter be admitted, to a rectory or vicarage, and becomes thereby the owner of the great or small tithes.

But if voluntary commutation slackens, they then purpose to interfere more actively; and they will at once interfere in special cases or peculiar districts, which seem to them to make their early interference desirable.

The advantage of the voluntary agreement consists in

such award, notice thereof shall be given in such manner as to them shall seem fit; and after the expiration of twenty-one days after such notice shall have been given, the commissioners, or some assistant commissioner, shall, except in the cases for which provision is hereinafter made, proceed to ascertain the clear average value (after making all just deductions on account of the expenses of collecting, preparing for sale, and marketing, where such tithes have been taken in kind,) of the tithes[a] of the said parish, according to the average of seven years preceding *Christmas* in the year one thousand eight hundred and thirty-five:[b] Provided, that if during the said period of seven years, or any part thereof, the said tithes or any part thereof shall have been compounded

upon an average of Seven Years preceding Christmas 1835.

If compounded or demised, Composition or

its allowing the land and titheowners to settle the amount to be paid and apportioned in any way they please. Hence the 37th and 38th clauses are only applicable to cases of compulsory commutation, unless the land and titheowners agree that the valuers shall adopt the same principle. But the commissioners, when their powers are called into action, are, in the first place, tied down to the principles of previous payments for the last seven years, whether they be high or low, with the power, reserved in the 38th clause, of increasing or decreasing such amount to the extent of one-fifth, or in special cases, or under circumstances of fraud or collusion, with power of alteration, having reference to the rent-charges paid in the neighbourhood. (See proviso to Clause 38, and Report of 1st May, 1838, as to exercise of powers in special cases, p. 117, *post*.)

[a] Under the word "tithes" are included moduses, &c. (See Clause 12.) There may be cases where questions respecting moduses have been kept in abeyance, and small payments made and accepted without prejudice, or from mutual fear of litigation, or from forbearance on both sides, instead of the exact amount of payment for which the modus is fixed. In such cases, it would be open to the parties to submit their respective claims, to have the amount of rent-charge reduced to the exact modus, or to have the amount actually paid either established or increased, or decreased by 20*l.* per cent., or treated as a special case according to its peculiar circumstances.

[b] Christmas, 1835, is a fixed date anterior to the passing of the Act; and the object of thus fixing it is obvious.

Rent to be taken as value of Tithes.

for or demised to the owner or occupier of any of the said lands in consideration of any rent or payment instead of tithes, the amount of such composition or rent or sum agreed to be paid instead of tithes shall be taken as the clear value of the tithes included in such composition, demise, or agreement during the time for which the same shall have been made;[a] and the commissioners or assistant commissioner shall award the average annual value of the said seven years so ascertained as the sum to be taken for calculating the rent-charge to be paid as a permanent commutation of the said tithes: Provided also,

[a] As the singular imports the plural, this proviso will extend to cases of sub-demises to more than one party falling under the class of owner of the lands, or occupier; but the permanent rent-charge will be based on the arrangement subsisting between the actual occupier of the land, subject to tithe, and the titheowner who stands as actual occupier, or, as it were, landlord of the tithes. Thus, if A. lets the tithes to B., who takes in kind, the rent-charge will be based on the tithes as so taken; but if B. be the occupier, or being the landowner shall sub-let them to his tenants, or compound, at a given sum, the rent on the sub-letting or the composition will be the basis of the rent-charge. Again, if A., the tithe-owner, let to B., the landowner, who lets his land tithe-free, the rent paid by B. to A. will be the basis for the commutation: as the principle of the provision is, that what the titheowner has been *bonâ fide* content to take, or the landowner or occupier has been content to pay for the last seven years, may fairly be presumed to represent the agreed, and hence substantial, value of the tithes, as they immediately affect or press upon the land. It is important to bear this in mind, and also to observe, that the rent for which tithes are compounded imports the rent or composition due from the immediate tithe-payer; otherwise, in a succession of demises, there would be more rent-charges than one, or it might be urged that the nominal rent in a college or chapter lease, where a fine has been paid, is to be the basis of the commutation. If, however, a fine and nominal rent has been paid by the actual occupier of the land, and in any case a question should arise on the application of this clause, the spirit of the Act would seem to require that the value of the fine paid should be converted into an annuity payable during the lease, and with the annual rent, estimated as the real rent paid, or that the case should be submitted to the commissioners to be dealt with specially.

that whenever it shall appear to the commissioners that the party entitled to any such rent or composition shall in any one or more of the said seven years have allowed and made any abatement from the amount of such rent or composition, on the ground of the same having in any such year or years been higher than the sum fairly payable by way of composition for the tithe, but not otherwise,[a] then and in every such case such diminished amount, after making such abatement as aforesaid, shall be deemed and taken to have been the sum agreed to be paid for any such year or years: Provided also, that in estimating the value of the said tithes the commissioners or assistant commissioner shall estimate the same, without making any deduction therefrom on account of any parliamentary, parochial, county, and other rates, charges, and assessments to which the said tithes are liable; and whenever the said tithes shall have been demised or compounded for on the principle of the rent or composition being paid free from all such rates, charges, and assessments, or any part thereof, the said commissioners or assistant commissioner shall have regard to that circumstance, and shall make such an addition on account thereof as shall be an equivalent.[b]

Proviso for Reduction where Abatement has been made on account of Composition being above real value.

Tithes to be valued without deduction on account of Parochial and County Rates.

[a] Abatements from mere compassion to the insolvency or distress of the tithe-payer are not included in this provision.

[b] This provision is founded on the principle, that the composition which was agreed to be paid clear of rates would have been increased by the amount of those rates, if it had been liable to them. For instance, if the rates were 1*s.* in the 1*l.*, and the composition had been 190*l.* free from rates, it is plain that the real composition, subject to rates, was 200*l.* It is erroneously supposed by many persons that the rates are in all cases to be added, although paid by the titheowner. This is clearly a misconstruction of the Act, which is confined to cases where the rates, or any part of them, have been paid by the tithe-payers. Nor is it allow-

Power to alter Averages on Appeal.

38.[a] Provided always, and be it enacted, that in case notice in writing under the hand of any patron, or the hands of any landowners or titheowners whose interest in the lands or tithes of the parish shall not be less than one-half of the lands subject to tithes, one-half of the great tithes or one-half of the small tithes of the parish, shall be given to the commissioners or assistant commissioner acting in that behalf, within one calendar month next after the notice of the intention to make an award shall have been given as aforesaid, that the average value to be ascertained as aforesaid will not fairly represent the sum which ought to be taken for calculating a permanent commutation of the great or small tithes of the said parish, the commissioners shall have power to

able to take the future rating into account in ascertaining the past averages. In a circular issued by the Commissioners on the 22d August last, the principle is enforced that the actual rates paid by the landowners in such cases for the seven years ending 1835, or an equivalent to their amount, according to the principle and average rate of assessment prevailing in the parish for that period, or for any part of it during which they were so paid, is to be added to the tithes paid for the same period, and the two together form the basis of the compulsory commutation.

[a] The provisions of Clauses 38 and 39, for making alterations in the amount of the average value, are discretionary with the commissioners; but they can only be put in force in cases of compulsory awards of the total amount of rentcharge to be fixed on any parish. Any case of fraud or collusion in voluntary agreements is matter of inquiry by the commissioners before confirmation (Clause 27); and after such confirmation of either a voluntary agreement or compulsory award, all matters of objection will be confined to the apportionment, and will be disposed of accordingly. (See Clause 61.) Although these clauses may not be immediately brought into operation, it will be desirable for any person interested in tithes to collect and preserve evidence of their value, for the purpose of being used as occasion may require; the average, in all cases, being confined to seven years, ending Christmas, 1835.

diminish or increase the sum to be so taken by a sum amounting to not more than one-fifth part of the average value ascertained as aforesaid: Provided always, that every case which shall appear to the commissioners to be fraudulent or collusive, or which, by reason of the length of time which shall have elapsed since the making of any composition then in force, or which by reason of the peculiar interest in the lands or tithes of either of the parties to any composition, or by reason of any other special circumstances, ought in the judgment of the commissioners to be separately adjudicated upon, shall be reserved for separate adjudication as hereinafter provided; and the commissioners shall certify and report to one of His Majesty's principal secretaries of state, under their hands and seals, before the first day of *May* in the year one thousand eight hundred and thirty-eight, in what manner the discretion hereby vested in them ought in their judgment to be exercised, and shall in the said report lay down such rules for the guidance of the assistant commissioners as may to them seem expedient, and such report shall be laid before Parliament within six weeks after the same shall have been received, or after the meeting of Parliament; and unless Parliament shall otherwise provide, such rules shall be observed by the said commissioners and assistant commissioners in the exercise of the discretion hereby vested in the commissioners.[a]

Power to increase or diminish Average by one-fifth.

Certain cases may be reserved for Special Adjudication at discretion of Commissioners

Commissioners to Certify before 1st May, 1838, how discretion to be exercised.

[a] See Report of 1st May, 1838, p. 117. This Report is in fact under the above provision a part of the Act itself. Its length, however, prevents its insertion, either in the text or as a note in this place, and it is thought better to give it in an entire and complete form, rather than break it up into detached portions according to its subject-matter. See also observations on compulsory commutations, added by way of note to the Report, p. 130.

Special Adjudications how to be made; and report of such. Cases to be made to the Secretary of State.

39. And be it enacted, that the commissioners shall from time to time [a]report to one of His Majesty's principal secretaries of state, under their hands and seals, all the cases which under the power hereinbefore reserved to them in that behalf shall have been reserved for separate adjudication, and shall state in every such report the reasons for so reserving every case mentioned therein; and the commissioners shall in every such case award the rent-charge to be paid as a permanent commutation for tithes, having regard to the average rate which shall be awarded in respect of lands of the like description and similarly situated in the neighbouring parishes: Provided always, that a draft of such intended award, with a copy of so much of the said report as is applicable to such award, shall be deposited in the parish; and the commissioners, or an assistant commissioner to be specially appointed by the commissioners for that purpose, shall hear and determine all objections to the award in the like manner as is herein provided in an ordinary case of award, and the commissioners shall have power thereupon to amend the draft of the said award accordingly.

Award of such Cases to be deposited in the Parish.

How the Tithe of Hops, Fruit, and Garden produce is to be valued.

40. And be it enacted,[b] that in case any of the lands in the parish shall be hop grounds, orchards, or gardens, and notice shall be given by the owner thereof to the commissioners or assistant commissioner acting in that behalf that

[a] The Report required by the preceding clause is as to the general exercise of the power to increase or decrease the amount paid for the seven years ending Christmas, 1835, and to adjudicate specially. The report required by this clause refers to the cases in which the powers have actually been exercised.

[b] The owner of the hop grounds, orchards, and gardens, of which the tithes will probably be much higher

the tithes thereof should be separately valued, the commissioners or assistant commissioner shall estimate the value of the tithes thereof according to the average rate of composition for the tithes of hops, fruit, and garden produce respectively, during seven years preceding *Christmas* in the year one thousand eight hundred and thirty-five, within a district to be assigned in each case by the commissioners or assistant commissioner, and estimating the same as chargeable to all parliamentary, parochial, county, and other rates, charges, and assessments to which the said tithes are liable, and shall add the value so estimated to the value of the other tithes of the parish ascertained as aforesaid.

How the Tithe of Coppice Wood is to be valued.

41. And be it enacted,[a] that in case any of the lands in the parish shall be coppices, and notice shall be given by the owner thereof, or by the owner of the tithes thereof, to the commissioners or assistant commissioner acting in that behalf, that the tithes thereof should be separately valued, the commissioners or assistant commissioner shall estimate the value of the tithes thereof with a due regard to the average value, estimated according to the best of their judgment, of coppice wood of the same kind cut

than of ordinary lands or produce, is the party most interested in having provision made for a separate valuation. Hence it is on his notice that the commissioners are called on to interfere. See note (a), p. 126.

[a] In the case of coppice wood, it may happen that no cutting has taken place, or tithe accrued, for seven years. In that case, it is the interest of the titheowner to call for a separate valuation. Or there may have been a cutting in the seven years, amounting to more than a fair average, according to the custom of cutting. In this latter case, the tithe-payer is interested in having a separate valuation. Either land or titheowner may therefore call for a separate valuation under this clause.

during the said period of seven years in that parish and the neighbouring parishes, estimating the same as chargeable to all parliamentary, parochial, county and other rates, charges, and assessments to which the said tithes are liable, and shall add the clear value of the tithes so estimated to the value of the other tithes of the parish ascertained as aforesaid; and the commissioners shall, in the report which they are hereinbefore required to make to one of His Majesty's principal secretaries of state before the first day of *May* in the year one thousand eight hundred and thirty-eight, lay down rules for the guidance of the assistant commissioners in estimating the value of the tithes of coppice wood, and unless Parliament shall otherwise provide, such rules shall be observed by the said commissioners and assistant commissioners.[a]

Clause 38.

Provision for the change of culture of Hop Grounds and Market Gardens.

42. And be it enacted,[b] that the amount which shall be charged by any such apportionment, as hereinafter provided, upon any hop grounds or market gardens in any district so to be assigned, shall be distinguished into two parts, which shall be called the ordinary charge and the extraordinary charge, and the extraordinary charge shall be a rate per imperial acre, and so in proportion for less

[a] See Report, 1st May, 1838, p. 117, and calculation, p. 129, as to tithe of coppice-wood.

[b] This provision for fixing an additional tithe on land newly brought into hop or garden cultivation, is applicable both to voluntary and compulsory cases; but it is evidently against the principle of the Bill, which is opposed to a tax on improvements, or a check on change of cultivation. Still without this provision, the old hop grounds and market gardens would remain charged with a high tithe, and thus the new would have a *quasi* monopoly. The subject involved considerable difficulty, for if the rent-charge on hops and gardens were simply based on the higher rate of tithe, to which they are liable, in comparison with the tithe of

quantities of ground, according to the discretion of the valuers or commissioners or assistant commissioner by whom the apportionment shall be made as aforesaid; and all lands whereof the tithes shall have been commuted under this Act, and which shall cease to be cultivated as hop grounds or market gardens at any time after such commutation, shall be charged after the 31st day of *December* next following such change of cultivation, only with the ordinary charge upon such lands; and all lands in any such district the tithes whereof shall have been commuted under this Act, and which shall be newly cultivated as hop grounds or market gardens at any time after such commutation, shall be charged with an additional amount of rent-charge per imperial acre, equal to the extraordinary charge per acre upon hop grounds or market gardens respectively in that district: Provided always that no such additional amount shall be charged or payable during the first year, and half only of such additional amount during the second year, of such new cultivation; and an additional rent-charge by way of extraordinary charge upon hop grounds and market gardens, newly cultivated as such beyond the limits of every district in

No additional amount to be charged during first year, and only half during second.

mere arable and pasture lands, the burthen would be out of all proportion on a change of cultivation; hence arose a necessity for a provision which would relieve hop grounds and gardens from such a rent-charge; and it then became a matter of mere justice to make the provision extend to a change the other way.

The first part of this clause providing for two rates of charge, relates to hop grounds and market gardens within any district to be assigned by the commissioners under the 40th clause. The latter part of the clause relates to hop grounds, or market gardens, not comprised within any such district. And the provision for this extraordinary charge is limited to the duration of the commission. After the time fixed by the Act for the commission shall have expired, the extension or modification of this provision will rest with Parliament.

which any extraordinary charge for hop grounds or market gardens respectively shall have been distinguished as aforesaid at the time of the commutation, shall be charged by the commissioners at the time of such new cultivation, upon the request of any person interested therein, if such new cultivation shall have taken place during the continuance of the commission of the said commissioners, and after the expiration of the commission shall be charged in such manner and by such authority as Parliament shall direct, and shall be payable and recoverable in like manner and subject to the same incidents in all respects as an extraordinary charge charged upon any hop grounds or market gardens at the time of commutation.

How exemptions by reason of enclosure, or Conversions from barren heath—or of being glebe or parcel of possession of Privileged Orders, to be dealt with.

43. And be it enacted, that in case any of the lands in the parish shall, during any part of the said period of seven years preceding *Christmas* in the year one thousand eight hundred and thirty-five, have been exempted from payment of tithes by reason of having been enclosed under any Act of Parliament, or converted from barren heath or waste ground,[a] or by reason of being glebe lands[b] or of having been heretofore parcel of the possessions of any

[a] But under 2 and 3 Ed. 6. c. 13. § 5 and 6, there is a class of cases not included under this exemption: namely, when lands have come into profitable cultivation immediately after enclosure, during any part of the seven years ending Christmas, 1835. It will rest with the commissioners to determine whether these cases can be dealt with in the spirit of the 43d clause, or as subjects for special adjudication.

[b] And hence discharged from tithes whilst in the hands of the incumbent. Wherever this is the probable turn which the commutation will take, the landowners in any voluntary commutation should stipulate that the amount, which will be added in respect of such lands to the gross rent-charge, should in the apportionment be separately fixed on the lands causing the additional burthen. This circumstance, in cases,

privileged order,[a] and notice shall have been given as last aforesaid to the commissioners or assistant commissioner acting in that behalf, that the tithes thereof should be separately valued, the commissioners or assistant commissioner shall estimate the value of the tithes thereof according to the average value which shall be ascertained as aforesaid in respect of lands of the like description and quality in that parish and the neighbouring paishes, or as near thereto as the circumstances of each case may in their judgment require, and estimating the same as chargeable to all parliamentary, parochial, county, and other rates, charges, and assessments to which the said tithes are liable, and shall add the value so estimated to the value of the other tithes of the parish ascertained as aforesaid.

Moduses, &c. how to be allowed for in the Award.

44. And be it enacted,[b] that if any modus or composition real, or prescriptive or customary where the titheowner is also occupier or owner of much land in the parish, offers an important reason for preferring voluntary to compulsory commutation.

[a] For example, there are several tracts of land, formerly the property of the privileged orders of Cistercians and Hospitallers, which paid tithes whilst occupied by a tenant, but were exempt when held by the owners. This partial exemption is now the privilege of the present owners of these lands: and hence a special provision is necessary, in order to cover cases where the exemption has extended over the seven years, ending Christmas, 1835. But when valued, it will be found by the next clause, that due allowance must be made for the exemption by the commissioners, who are bound to fix the rent-charge, and declare it payable like the tithes, only when the lands out of which the rent-charge issues are occupied by a tenant, but ceasing to be payable when occupied by an owner. Under a voluntary agreement it is of course competent to the parties to make any arrangement they see fit, and fix a rent-charge payable under all circumstances, and without reference to change of occupation.

[b] This clause is similar to the provision, with respect to moduses and the like, in the case of parochial agreements, Clauses 21 and 33.

payment shall be payable instead of the tithes of any of the lands or produce thereof in the said parish, the commissioners or assistant commissioner shall in such case estimate the amount of such modus, composition, or payment as the value of the tithes payable in respect of such lands or produce respectively, and shall add the amount thereof to the value of the other tithes of the parish ascertained as aforesaid, and shall also make due allowance for all exemptions from or non-liability to tithes of any lands or any part of the produce of such lands:[a]

Proviso as to recent decisions.

Provided also, that if it shall appear to the said commissioners or assistant commissioner that any question concerning any modus or composition real, prescriptive or customary payment, or claim of exemption from or non-liability to the payment of tithes relating to the lands in question, shall have been decided by competent authority before the making of the said award,[b] the commissioners or assistant commissioners shall act on the principle established by such decision, and shall make their award as if such decision had been made at the beginning of the said period of seven years.[c]

[a] Lord Tenterden's Act, 2 & 3 W. 4. c. 100. § 1, seems to refer only to *general* exemptions from tithes. In that case it would follow that where any particular titheable produce has not been tithed, the tithe of other produce of the same class of tithes in the parish having been taken, a modus or customary composition must be shown, to save the land for which the partial exemption is claimed from being treated as a special case in the award, or at the least made to bear a share of the rent-charge in the apportionment.

[b] This includes any decision under references in pursuance of Clause 24, (see note (a), p. 23), or by the commissioners themselves under this clause.

[c] Thus, if during the seven years a modus has been established, the award will take the seven years' modus as the basis for the rent-charge to be apportioned on these particular lands; but if, on the contrary, a modus has been set aside, and the lands declared subject to tithes, then the average of seven years' value of tithes will be taken. See note (a),

45. And be it enacted,[a] that if any suit shall be pending touching the right to any tithes, or if there shall be any question as to the existence of any modus or composition real, or prescriptive or customary payment, or any claim of exemption from or non-liability under any circumstances to the payment of any tithes in respect of any lands or any kind of produce, or touching the situation or boundary of any lands, or if any difference shall arise whereby the making of any such award by the commissioners or assistant commissioner shall be hindered, it shall be lawful for the commissioners or assistant commissioner to appoint a time and place in or near the parish for hearing and determining the same; and the decision of the commissioners or assistant commissioner shall be final and conclusive on all persons, subject to the provisions hereinafter contained.[b]

Commissioners may hear and determine disputes.

p. 35, to Clause 37. Parties against whom decrees have been obtained, which they are unwilling to submit to, and against whom they have the power of appeal, must observe that such a power cannot strictly be exercised before the commissioners, who are here bound by the decree. Their course is therefore to exercise their right of appeal to the proper tribunal, and then, if an award or parochial agreement be set on foot and prosecuted, it will be matter of suggestion to the commissioners to withhold confirmation till the appeal is disposed of. The commissioners may then consider how far such a position brings the case within their reach, under the 45th clause. See 2 & 3 W. 4. c 100. § 2.

[a] In the cases of voluntary agreements, the mode of adjusting disputes is by a reference to arbitrators, chosen by the parties, and an umpire chosen by the arbitrators. In the compulsory cases, the adjustment rests with the commissioners or assistant commissioners, subject to an appeal at law, as provided in the following clauses.

By these clauses all the suits of the description above mentioned, which were pending on the 1st October, 1838, are in effect transferred to the commissioners. In either case, a vast saving of costs, and vexatious litigation and heart-burning, will be effected. See note, p. 134.

[b] See note (a), Clause 11, and note (a), Clause 63, p. 66. The tenor of the Act, which leaves the final confirmation of every commutation with the commissioners, leads to the

Subject to Appeal by an Issue at Law.

46. Provided always, and be it enacted, that any person claiming to be interested in any lands or in the tithes thereof who shall be dissatisfied with any such decision of the commissioners or assistant commissioner, may, if the yearly value of the payment to be made or withholden according to such decision shall exceed the sum of twenty pounds, cause an action to be brought in any of His Majesty's courts of law at *Westminster* against the person in whose favour such decision shall have been made, within three calendar months next after such decision shall have been notified in writing in such manner as the commissioners or assistant commissioner shall direct, to the parties interested therein or to their known agents; in which action the plaintiff shall deliver a feigned issue, whereby such disputed right may be tried, and shall proceed to a trial at law of such issue at the sittings after the term or at the Assizes then next or next but one after such action shall have been commenced, to be holden for the county within which such lands or the greater part thereof are situated, with liberty nevertheless for the court in which the same shall have been commenced or any judge of His Majesty's courts of law at *Westminster*, to extend the time for going to trial therein, or to direct the trial to be in another county if it shall seem fit to such court or judge so to do; and every defendant in any such action shall enter an appearance thereto, and accept such issue; but in case the parties shall differ as to the form of such issue, or in case the defendant shall fail to enter such appearance or accept such issue, then the same shall be settled under the direction of the court in which the action shall be brought,

inference that they may review the decisions of the assistant-commissioners, even in these cases.

or by any judge of His Majesty's courts of law at *Westminster*, and the plaintiff may proceed thereon in like manner as if the defendant had appeared and accepted such issue; and the parties in such action shall produce to each other and their respective attorneys or counsel, at such time and place as any judge may order before trial, and also to the court and jury upon the trial of any such issue, all books, deeds, papers, and writings, terriers, maps, plans, and surveys relating to the matters in issue in their respective custody or power; and it shall be lawful for the judge by whom any such action shall be tried, if he shall think fit, to direct the jury to find a verdict, subject to the opinion of the court upon a special case; and the verdict which shall be given in any such action, or the judgment of the court upon the case subject to which the same may be given, shall be final and binding upon all parties thereto, unless the court wherein such action shall be brought shall set aside such verdict and order a new trial to be had therein, which it shall be lawful for the said court to do, if it shall see fit: Provided also, that in case any such decision shall involve a question of law only, and the parties in difference shall be agreed upon the facts relating thereto, and whereon such decision shall have been founded, the said commissioners or assistant commissioner, at the request of the person dissatisfied, (such request to be made in writing within three calendar months after such decision, and at least fourteen days' previous notice in writing of such request to be given in like manner to the other parties in difference or to their known agents,) shall direct a case to be stated for the opinion of such one of His Majesty's courts of law at *Westminster* as the commissioners or assistant commissioner shall think fit,

Or by taking the opinion of a Court of Law thereon.

which case shall be settled by them or him, or under their or his direction in case the parties differ about the same, and may be set down for argument and be brought before the court in like manner as other cases are brought before the court; and the decision of such court upon every case so brought before it shall be binding upon all parties concerned therein: Provided always, that after such verdict given and not set aside by the court, or after such decision of the court, the said commissioners or assistant commissioner shall be bound by such verdict or decision; and the costs of every such action, or of stating such case and obtaining a decision thereon, shall be in the discretion of the court in or by which the same shall be decided, which may order the same to be taxed by the proper officer of the court; and the like execution may be had for the same as if such costs had been recovered upon a judgment of record of the said court.

Proceedings not to abate by Death of Parties.

47. And be it enacted,[a] that no proceeding of or before the commissioners or any assistant commissioner, or in any action, or in any case stated, or reference in pursuance of this Act, shall abate or cease by reason of the death of any person interested therein.

In case of Death of Parties before

48. And be it enacted, that if any person in whose favour any such decision of the com-

[a] This and the following enactments, which are of technical advantage, relate to both voluntary agreements and references, and to compulsory proceedings or decisions of the commissioners; so that the representatives of parties to arbitrations, references, and suits, will stand in the stead of their original parties, in case of the death of the latter.

missioners or any assistant commissioner shall have been made shall die before any such action shall have been brought or case stated, and before the expiration of the time hereinbefore limited for that purpose, it shall be lawful for every person who might have brought such action, or have had such case stated against the person so dying, to bring or have the same within the time so limited as aforesaid, nominally against such person as if living, and to serve the said commissioners or assistant commissioner with process and notices relating thereto, in the same manner as the person deceased might have been served therewith if living; and it shall be lawful for every person entitled to the benefit of such decision as aforesaid, or, in case of any such person being a minor, idiot, lunatic, feme covert, beyond the seas, or under any other legal disability, the guardian, trustee, committee of the estate, husband, or attorney respectively, or in default thereof, such person as may be nominated for that purpose by the commissioners, and whom they are hereby empowered to nominate under their hands and seal, to appear and defend such action or argue such case; and proceedings shall be had therein in the same manner, and the rights of all persons shall be equally bound and concluded by the event of such action or the decision upon such case, as if such person had been living; and the costs of every such action or case shall be in the discretion of the court as aforesaid.

Actions brought, &c. the same to be carried on and defended in their names.

49. Provided always, and be it enacted, that nothing in this Act contained shall revive any right to tithes which now is or hereafter shall be barred by any law in force for shortening the time required in claims of modus decimandi or exemption from or discharge from tithes, or for

Statutes of Limitation not to be affected.

the limitation of actions and suits relating to real property.[a]

Commissioners to award total sum to be paid for the tithes of the Parish.

50. And be it enacted, that as soon as all such suits and differences shall have been decided, or if there shall have been no suits or differences, then as soon as the commissioners or assistant commissioner shall have ascertained and estimated as aforesaid the total value of all the tithes of the said parish, the commissioners or assistant commissioner shall frame the draft of an award, declaring that the sum ascertained as aforesaid shall be the amount of the rent-charge to be paid in respect of the tithes of the said parish, and every such draft shall contain all the particulars hereinbefore required to be inserted in any parochial agreement, or any

[a] These Acts are two, one commonly called Lord Tenterden's Act, being 2 & 3 W. 4, c. 100; the other, the present Statute of Limitations, being 3 & 4 W. 4, c. 27. (But see Note (s), to Clause 44, p. 46.) A claim for exemption will often arise in respect of small portions of land, cottage gardens, and the like, where no tithe has been taken of late years, either through the poverty of the occupier, or by being overlooked from inaccurate maps, or by negligence of the titheowners. Such cases would seem to involve points for special adjudication or adjustment, under the 38th Clause. And it is highly important that the valuers, before they apportion, should seek instructions from the landowners, or even the commissioners, on this point.

In a case laid by a lay impropriator, objecting to a claim for exemption on this ground, before Sir W. Follett, he has given his opinion as follows:—

"If the orchards and gardens in question have produced titheable matters for 30 years, and the occupiers of the same have, during that time, taken the whole produce to themselves, and have paid tithe in no shape, or made any acknowledgment of their liability to do so, I am of opinion that the titheowner cannot now recover any tithe for these gardens or orchards.

"It appears from the above statement, that no tithe can be shewn to have been paid *at any time* for these lands; and I think, therefore, they cannot be taken into consideration in estimating the amount of rent-charge to which the titheowner may be entitled under the Commutation Act."

schedule thereto :[a] Provided always, that no such award shall be made for giving land instead of the tithes of the parish.[b] Such Award not to extend to giving Land.

51. And be it enacted, that as soon as the said draft shall have been made by the commissioners or assistant commissioner, they or he shall deposit a copy of the same, and of any special report thereunto annexed, at some convenient place within the said parish, for the inspection of all persons interested in the said lands or tithes, and shall forthwith give notice in such manner as to the commissioners shall seem fit, where the said copy may be inspected; and shall also in such notice appoint some convenient place and time (the first not earlier than twenty-one days from the first giving of such notice) for holding a meeting to hear objections to such intended award by any person interested therein ;[c] and the said commissioners or assistant commissioner at such meeting as aforesaid shall hear and determine any objections which may be then and Commissioners may hear and determine objections to the Award, and appoint a Meeting for the purpose.

[a] See note to Clause 21. The Act 1 Vict. c. 69. § 4, 5, 6, allowing of the omission of certain particulars in apportionments, may indirectly apply to cases of awards. For if the commissioners find cases to which these clauses will be applicable in the apportionment, it would seem they might omit any of the particulars in the award, not essential to the distribution of the rent-charge in the apportionment.

[b] Land can only be given in the case of parochial agreement under Clauses 29, 30, and 31. But, after the intervention of the commissioners, a power is given by Clause 62, enabling any landowner to make a voluntary agreement with any ecclesiastical titheowner for land to the extent of twenty acres, previous to the confirmation of the apportionment. The commissioners are prohibited from awarding land, for the obvious reason that it would, in effect, be giving them a power to make a compulsory redemption.

[c] The commissioners state in their directions, that where there are but few parties, or all parties are agreed, the agreements and awards may be deposited, and meetings to hear objections held, at their office in London.

there made to the said intended award, or adjourn the further hearing thereof, if they or he shall think proper, to a future meeting, and may, if they or he shall see occasion, direct any further valuation of the lands or tithes, or any of them; and from time to time fix further meetings for the hearing and determining of objections, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed with regard to the original meeting; and when the said commissioners or assistant commissioner shall have heard and determined all such objections, they or he shall amend the draft of such award accordingly, if they or he shall see occasion.[a]

Award to be amended if Commissioners shall see occasion.

Award to be confirmed by the Commissioners.

52. And be it enacted,[b] that as soon as the commissioners or assistant commissioner shall have made such amendments in the draft of the award as to them or him shall seem necessary, they or he shall cause the same to be fairly written, and shall sign and send it to the office of the commissioners, and the commissioners shall satisfy themselves that all the proceedings incident to the making of such award have been duly performed; and if they shall think that the award ought to be confirmed,[c] shall confirm the same under their hands and seal, and shall add to the award the date of such confirmation, and shall publish the fact of such confirmation and the date thereof, in the parish, in such manner

[a] By Clause 65, the commissioners are empowered to give special notice to reversioners and remainder-men, and other persons interested in the award.

[b] This confirmation closes that part of the commutation which fixes the total rent-charge on the parish, and brings the transaction down to the same stage as the confirmation of the parochial agreement by Clause 27. See note (a), p. 23.

[c] See note (a) to Clause 11, and note (a), Clause 63, p. 66.

as to them shall seem fit; and every such confirmed award shall be binding on all persons interested in the said lands or tithes. Confirmed Award binding on all Persons.

53. And be it enacted,[a] that as soon as the commissioners shall have confirmed any such award, the commissioners or some assistant commissioner shall call a parochial meeting of the owners of land subject to tithes in the said parish, for the purpose of choosing valuers to apportion the amount so awarded among the lands of the parish, and shall give notice thereof in writing under their or his hand, to be fixed at least twenty-one days before such meeting on the principal outer door of the church, or in some public and conspicuous place within the parish; and valuers or a single valuer may be chosen at such meeting by the landowners then present in like manner, and the valuers so chosen shall act with the same powers and be subject to the same provisions, as if the rent-charge so awarded had been agreed to at a parochial meeting of the landowners and titheowners of the parish, and the valuers had been thereupon chosen as aforesaid.[b] Commissioners to summon a Parochial Meeting to appoint Valuers.

54. And be it enacted,[c] that if upon the expiration of six calendar months after the day of If valuation not completed

[a] The commissioners, having agreed on their compulsory award of the total sum to be paid in any parish, are by this clause required to call a parochial meeting of the landowners, for the purpose of appointing valuers to effect the apportionment; thus recurring to the voluntary principle.

[b] See 32d and three following clauses and notes.

[c] If the landowners, after being thus called on, or even after they shall have agreed voluntarily on the whole sum to be paid, shall not fix on valuers within six months from the confirmation of the agreement or award; or if the valuers shall not have completed their apportionment by that time; then the commissioners may, by this clause, appoint their own valuers, and proceed to a compulsory appointment.

In Six Months, Commissioners to apportion.

the date of the confirmation of any agreement or award, no valuer or valuers shall have been appointed, or the apportionment by such valuers or valuer shall not have been made and sent to the office of the commissioners as hereinafter provided, it shall be lawful for the commissioners or some assistant commissioner to apportion the rent-charge previously agreed or awarded to be paid among the lands of the said parish, having regard to the average titheable produce and productive quality of the said lands, according to the discretion and judgment of the commissioners or assistant commissioner, but subject to the provisions hereinafter contained, and so that the several lands may have the full benefit in each case of every modus, composition real, prescriptive and customary payment, and of every exemption from or non-liability to tithes relating to the said lands respectively, and having regard to the several tithes to which the said lands are severally liable.[a]

Having regard to Produce and Quality of Lands.

Moduses, &c. to be respected.

Form of Apportionment.

55. And be it enacted,[b] that a draft of every apportionment shall be made, and shall set forth

[a] See notes to Clauses 44 and 45.

[b] This form of apportionment must be strictly followed in the case of either voluntary or compulsory apportionment. It will repeat the agreement or award for the whole sum and its schedule, and add the following particulars:—

1. The name, description, and statute measure of the several lands of each landowner.
2. Names and descriptions of the proprietors.
3. And of the occupiers.
4. Mode of cultivation at the time of the apportionment.*
5. With references to a map or plan.†
6. And add such map or plan, with corresponding references.
7. The amount charged on such several lands.
8. To whom and in what right payable.

* By 2 Vict. c. 69. § 5, the statement of the mode of cultivation, and amount charged on the several lands, may be omitted in cases of *voluntary* apportionment.

† The 1 Vict. c. 69. § 1, which relieves the commissioners

the agreement or award, as the case may be, upon which such apportionment is founded, and every schedule thereunto annexed; and the said draft, or some schedule thereunto annexed, whether made by or under the direction of the valuers or commissioners or assistant commissioners, shall state the name[1] or description and the true or estimated quantity in statute measure of the several lands to be comprised in the apportionment, and shall set forth the names[2] and description of the several proprietors and occupiers[3] thereof, and whether the said several lands are then cultivated[4] as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise, and shall refer,[5] by a number set against the description of such lands, to a map or plan[6] to be drawn on paper or parchment, and the same number shall be marked on the representation of such lands in the said map or plan; and the draft of the apportionment shall also state the amount[7] charged upon the said several lands, and to whom[8] and in what right the same shall be respectively payable.

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from testing and confirming the maps in certain cases, also applies to *voluntary* apportionments only. But it is probable that even when the commissioners have to exercise their compulsory powers, the expense of a map, on such a scale as they may deem fit, may be saved by their permitting the parties to testify their assent to any existing map, or agreeing to the schedule of quantities of land, as being accurately set out. In all cases where maps must be made or tested, the commissioners furnish forms of contract with surveyors, and directions for the most economical mode of proceeding. The maps under the Parochial Assessment Act are of great service in any case; but it is probable that the parish authorities would require some portion of the expense they may have incurred for their map, to be replaced by the landowners; and, on the other hand, if the landowners accommodate the parish with their map, they may expect a similar return. Where the two Acts are likely to be put in force in any parish, the contract between the surveyor and his employers should be framed to meet such a contingency. See Note (c), p. 62, to Clause 60.

Comptroller of Corn Returns to publish Average Price of Corn.

56. And be it enacted, that immediately after the passing of this Act, and also in the month of *January* in every year, the comptroller of corn returns for the time being, or such other person as may from time to time be in that behalf authorized by the privy council, shall cause an advertisement to be inserted in the *London Gazette*, stating what has been, during seven years ending on the *Thursday* next before *Christmas* day then next preceding, the average price of an imperial bushel of *British* wheat, barley, and oats, computed from the weekly averages of the corn returns.[a]

Rent-charges to be valued according to

57. And be it enacted, that every rent-charge[b] charged upon any lands by any such intended

[a] The corn returns are made weekly from 150 towns in England and Wales, under the 9 Geo. 4. c. 60. The returns ending Christmas, 1835, are those on which all commutations, at whatever period they may be made, will be founded. They are declared by 1 Vict. c. 69. § 7, to be—

For an imperial bushel of Wheat,		7*s.* 0½*d.*
,, ,,	Barley,	3*s.* 11½*d.*
,, ,,	Oats,	2*s.* 9*d.*

Averages gazetted for	1836.	1837.
Wheat	6*s.* 8½*d.*	6*s.* 6½*d.*
Barley	3*s.* 11½*d.*	3*s.* 11½*d.*
Oats	2*s.* 9*d.*	2*s.* 8½*d.*

[b] The progress of every commutation will be as follows:—

1st. To ascertain the gross annual amount in money-value of the tithes which have been paid in any parish or district; calculated in the case of an award by the commissioners, on an average of seven years ending Christmas, 1835, upon the principles of the Clauses 37 to 52.

2dly. To ascertain how many bushels of each of the three kinds of grain would be purchased with such amount at the average prices ascertained by the returns, ending Christmas, 1835; as, *e. g.*, if the gross amount be 300*l.*, 100*l.* would be calculated as if laid out in wheat; 100*l.* in barley; 100*l.* in oats.

3dly. To ascertain in each succeeding year the money-value of this number of bushels of each kind of grain, at the price fixed by the average of the seven years, ending at the then preceding Christmas. Thus, suppose the whole amount ascertained before Christmas, 1836, is 300*l.*, then taking nearly the average prices of the seven years ending Christmas,

apportionment shall be deemed at the time of the confirmation of such apportionment, as hereinafter provided, to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley, and oats as the same would have purchased at the prices so ascertained by the advertisement to be published immediately after the passing of this Act, in case one-third part of such rent-charge had been invested in the purchase of wheat, one-third part thereof in the purchase of barley, and the remaining third part thereof in the purchase of oats; and the respective quantities of wheat, barley, and oats so ascertained shall be stated in the draft of every apportionment.[a] the average price of Corn, according to returns ending Christmas 1835.

58. And be it enacted,[b] that it shall be lawful for the valuers or commissioners or any assistant Rent-charge may be

1835, and neglecting the fractions, one-third of the 300*l.*, or 100*l.*, at 7*s.* per bushel, would give 286 bushels of wheat.
100*l.*, at 4*s.* per bushel, would give 500 bushels of barley.
100*l.*, at 2*s.* 9*d.* per bushel, would give 727 bushels of oats.
Supposing that at Christmas, 1836, the average price of the seven preceding years had been—

Wheat, 6*s.* per bushel
Barley, 3*s.* 6*d.* do.
Oats, 2*s.* 6*d.* do.

the rent-charge of 1837 would have been—

			£	*s.*	*d.*
286 bushels of Wheat, at 6*s.*	=	85	16	0
500 „ Barley, 3*s.* 6*d.*	=	87	10	0
727 „ Oats, 2*s.* 6*d.*	=	90	17	6
Total for 1837 . . .		£264	3	6

And the like process would take place in every future year, according to Clause 67; the money-value varying according to the price of the seven years' returns ending at the then preceding Christmas.

[a] The 1 Vict. c. 69. § 4, enacts that it shall not be necessary to state the particular quantities of corn charged on any estate or portion of estate. But the whole rent-charge and the whole respective number of bushels of wheat, barley, and oats, are to be stated. The amount of the value in money separately charged on each estate or parcel under this clause must be also stated.

[b] This is an important provision, as it will enable land-

specially apportioned on particular Lands at request of any Landowner.

commissioner, upon the request of any landowner, at any time before the confirmation of the apportionment, to apportion the whole rent-charge intended to be charged upon any lands of such landowner held under the same title[a] and for the same estate, in the same parish, specially upon the several closes or portions of such lands, or according to an acreable rate or acreable rates, upon lands of different quality, in such manner and in such proportion, and to the exclusion of such of them as the landowner, with the consent of the person entitled to such rent-charge, may direct; and the particulars of every such special apportionment shall be included in the draft of the apportionment and taken to be a part thereof: Provided always, that the extra expenses of every such special apportionment shall be borne by the party at whose instance the same shall have been made, and shall be recoverable as other costs of the apportionment are recoverable; and that no close of land shall be charged with any rent-charge or share of rent-charge on account of the tithes of any other lands, unless the value of such lands shall be at least three times the value of the whole rent-charge upon such lands.[b]

How Expenses to be paid.

No Close to be charged unless three times the value of the Rent-charge.

owners to redeem their tithes to a very great extent, by charging them on any particular lands of the requisite value; so by fixing them at a sum per acre, each portion of the land will bear only its own burthen, and not be charged with the whole rent-charge fixed on the other lands of the owner. See Clause 72, for alteration of apportionment after final confirmation by commissioners.

This and the eight following clauses are applicable to every apportionment, whether voluntary or compulsory.

[a] If any landowner, as defined by Clause 12, holds his lands under different titles, *e. g.* in fee-simple as to one estate, and fee-tail, or for life or on terms of years for other parcels, much care will be required in attending strictly to the provisions of this clause, otherwise he may discharge his own lands held in fee at an unfair advantage over those where his interest is more limited.

[b] See 1 Vict. c. 69. § 9, giving the power of apportionment

59. And be it enacted, that for the purpose of making any such apportionment, as well as for the purpose of making any award as hereinbefore provided, the commissioners and assistant commissioners may employ such land surveyors and tithe valuers as to them shall seem fit, and may order them to be paid for valuing, surveying, mapping, and planning after any rate not exceeding two guineas to every such person for every day that he shall have been so employed, and may assess the same as part of the expenses of making their award or apportionment respectively; and the said commissioners and assistant commissioners, and the land surveyors and tithe valuers employed by them respectively, shall have all the powers and be subject to all the provisions hereinbefore enacted concerning the valuers appointed at a parochial meeting, except that they shall not be bound to adopt any principles of apportionment agreed to at any parochial meeting: Provided always, that it shall be lawful for such commissioners and assistant commissioners to make any agreement with any such land surveyors or tithe valuers for the payment to the same of one sum for the whole duty, or any part thereof, to be performed by them respectively.[a]

Commissioners may employ Surveyors.

Commissioners, &c. to have the power of Valuers as to entry in Lands, &c.

on such particular lands as the parties may agree upon, or the commissioners determine, in cases where there are several titheowners in a parish, and the lands, out of which the particular tithes payable to each titheowner originally issued, are not strictly defined. Thus if A. is entitled to any kind of tithe over the lands of B., and B. to tithes over the lands of A., in the same parish, an arrangement may be made for an exchange, so as to give each party the tithe or rent-charge over his own land, which each can then merge; the unity of possession of tithes and land having been thus acquired according to the conditions for merger contained in the 71st section, and the Act 1 & 2 Vict. c. 64. Disputes as to the identity of lands out of which the tithes issue may be cheaply disposed of by this provision.

[a] The landowners who appoint the valuers in case of

Apportionment to be signed by the person making it, and sent with the plan to the Commissioners.

60. And be it enacted, that the draft of every apportionment, whether made by or under the direction of the commissioners or any assistant commissioner, or by any valuer or valuers appointed as hereinbefore is provided,[a] shall be signed by the person by or under whose direction it shall have been made, and shall be sent, together with the map or plan therein referred to,[b] by the person by whom it is signed, to the office of the commissioners, or otherwise to some assistant commissioner, as the commissioners may direct, with such proof as the commissioners may require, that every proceeding incident to the making of such draft of apportionment has been duly performed.[c]

voluntary agreement or apportionment, will, of course, make their own terms, recollecting that it will be ground of appeal by any person bound by the agreement, though not a party to it, if the expense, which all will have to share, be excessive. See note to Clause 55; also Report of Commissioners 1st May, 1838, as to expenses, p. 127, *post;* also note (c) to Clause 60.

[a] Clauses 32, 33, 54 and 59.

[b] See 1 Vict. c. 69. § 1, as to map or plan.

[c] This provision must be carefully attended to, so that as little time may be lost as possible in transmitting the apportionment, duly signed by the valuers, &c., to the commissioners, or the commissioners may apportion under Clause 54.

In their circular respecting compulsory commutations, of the 27th August, 1838, the commissioners have the following remarks:—

"The tithe commissioners wish the persons employed to map and apportion to understand very distinctly, that, although under the circumstances enumerated here, much forbearance will be exercised towards them; and although the power of taking the apportionment out of their hands will be very cautiously exercised; yet such forbearance will have its limits.

"Whenever it is found that there has been trifling or loitering, or a disappointment of the fair expectations of their employers, the commissioners (however much they may regret the necessity for doing so) will not hesitate to take the apportionment into their own hands. In such cases the time and cost already bestowed upon the work will be lost.

"They also recommend to all landowners to contract for the completion of the apportionment by some given day after the confirmation of an agreement or completion of an award, and

Commissioners may hear and determine objections to Apportionment,

61. And be it enacted, that as soon as the draft of any such apportionment, verified as aforesaid, shall have been sent to the commissioners, they shall cause a copy of the same to be deposited at some convenient place within the said parish, for the inspection of all persons interested in the said lands or tithes, and shall forthwith cause notice to be given, in such manner as to them shall seem fit, where the said copy may be inspected; and shall also in such notice appoint some convenient place, and such times as they shall think necessary (the first not earlier than twenty-one days from the first giving of such notice), for holding a meeting to hear objections to the intended apportionment, by any person interested therein;[a] and the said commissioners or some assistant commissioner at such meeting as aforesaid shall hear and determine any objections which may be then and there made to the said intended apportionment, or adjourn the further hearing thereof, if they or he shall think proper, to a future meeting, and may, if they or he shall see occasion, direct any further valuation of the lands or any of them; and from time to time fix further meetings for the hearing and determining of objections, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed with regard to the original meeting; and when the said commissioners or assistant commissioner shall have heard and determined all such objections, they and he are and is hereby required to cause such apportionment to be

and appoint Meeting for the purpose.

Award to be amended if Commissioners shall see occasion.

to stipulate that if the apportionment is not then completed, nothing shall be paid for it. If they do not do this, they will run the risk of having first to pay partially an apportioner selected by themselves, and secondly the expenses of an apportionment made by the commissioners."

[a] By 1 Vict. c. 69. § 6, the draft need not be sent to any party, or meeting held, where there is only one landowner.

amended accordingly if they or he shall see occasion.[a]

Landowner may give twenty acres of Land in exchange for Ecclesiastical Tithes or Rent-charge.

62. And be it enacted,[b] that it shall be lawful for the owner of any lands chargeable with any such rent-charge, to agree at any time before the confirmation of any such instrument of apportionment with any ecclesiastical person, being the owner of the tithes thereof in right of any spiritual benefice or dignity, for giving land instead of the rent-charge charged or about to be charged upon his lands; and every such agreement shall be made under the hands and seals of the landowner and titheowner, and shall contain all the particulars hereinbefore required to be inserted in a parochial agreement for giving land instead of tithes or rent-charge: Provided always, that no such titheowner shall be enabled to take or hold more than twenty imperial acres of land in the whole, by virtue of any such agreement or agreements made in the same parish; and the

[a] It will be a proper precaution for every tithe-payer and owner to inspect this document when deposited, in order to judge of its accuracy in his own case, and to object in due time; as, after the confirmation, the rent-charge is irrevocably fixed. (Clause 66.) This provision for hearing objections to the apportionment is similar to that for objections to the confirmation of the compulsory award of the total rent-charge. (Clause 51.) Before confirming the parochial agreement, the commissioners, by Clause 27, have to make inquiry, and be satisfied of its accuracy, and would then dispose of any objections to that stage of the commutation. (See note (a) to Clause 11, and note (a) to Clause 63, p. 66.)

[b] This clause is to the same effect as Clause 29, with the exception of the stage of commutation at which it takes place, and of its being a license to individual landowners. In the former provision it was parochial, because no individual agreements for commutation are allowed, previous to the interference of the commissioners. Here, as they have already fixed the amount of rent-charge over the whole parish, it is allowed to individuals to give land by way of commutation for the charge fixed on them before the apportionment is finally confirmed. But in this case, as in Clause 29, the power is limited to twenty acres, and to ecclesiastical tithe,

same consent and confirmation relatively to the lands and tithes comprised in the said agreement shall be necessary to any such agreement, as in the case of a parochial agreement for giving land instead of tithes; and all the provisions hereinbefore contained concerning a parochial agreement for giving land shall be applicable to every such agreement as hereinbefore last mentioned, so far as concerns the lands and tithes comprised in the said agreement: Provided also, that any amendment which shall be made in the draft of apportionment before confirmation thereof, and subsequent to any such agreement for giving land instead of rent-charge, whereby the charge upon the lands referred to in such agreement shall be altered, shall be taken to annul the execution of such agreement for giving land, and any consent which may have been necessary thereunto.[a]

With like consent, &c. as in case of Parochial Agreement for Land.

Former Agreement for Land to be annulled by subsequent Agreement.

63. And be it enacted, that after such proceedings as aforesaid shall have been had, and all such objections (if any) shall have been finally disposed of, the commissioners or assistant commissioner shall cause the instrument of apportionment to be engrossed on parchment, and shall annex the map or plan thereunto belonging to the engrossed instrument of apportionment, and shall sign the instrument of apportionment, and the map or plan,[b] and shall send both to the office of the commissioners; and if the commissioners shall approve the apportionment they shall confirm the instrument of apportionment under their hands and seal,

Confirmation of Apportionment by the Commissioners.

Map or Plan to be annexed.

[a] This proviso is clearly necessary: for a landowner might have agreed to give, say three acres, in lieu of the rent-charge fixed upon him by the first draft of the apportionment, but on appeal his charge might eventually prove of the value of four or only two, and an alteration in the bargain would be required accordingly.

[b] See 1 Vict. c. 69. § 1, as to map or plan.

and shall add thereunto the date of such confirmation.[a]

Copies to be deposited in Registry of Diocese, and with Incumbent and Churchwardens.

64. And be it enacted, that two copies[b] of every confirmed instrument of apportionment and of every confirmed agreement for giving land instead of any tithes or rent-charge, shall be made and sealed with the seal of the said commissioners; and one such copy shall be deposited in the registry of the diocese within which the parish is situated, to be there kept among the records of the said registry, and the other copy shall be deposited with the incumbent and church or chapel wardens of the parish for the time being, or such other fit persons as the commissioners shall approve, to be kept by them and their successors in office with the public books, writings, and papers of the parish; and all persons interested therein may have access to and be furnished with copies of or extracts from any such copy, on giving reasonable notice to the person having custody of the same, and on payment of

May be inspected and Copies furnished.

[a] This confirmation of the apportionment is, in effect, the completion of the commutation.

The confirmation of the apportionment is not a mere ministerial act. In ordinary cases the commissioners would, no doubt, be satisfied and confirm; but if on the face of the apportionment, or from any appeal or other communication of an aggrieved party or owner, the commissioners think further investigation reasonable, they will require it. The commissioners themselves are the only persons to confirm agreements (§ 27), awards (§ 52), and apportionments (§ 63), and they are to confirm if they are satisfied, &c. So § 65 points out cases where they may make further inquiry if they see fit. Up to the moment of final confirmation the commissioners have a discretion to confirm or not as the justice of the case may seem to them to require. But they are not obliged to go into such cases, or appeal against apportionment, nor to listen to any evidence unless they see fit. If they do go into further inquiry they are the judges of what evidence they will receive, whether oral or written. They may also thus make the decision of an assistant commissioner inoperative.

[b] The expense of these copies is borne by the landowners. See Report, 1st May, 1838, p. 127.

two shillings and six-pence for such inspection, and after the rate of three-pence for every seventy-two words contained in such copy or extract; and every recital or statement in or map or plan annexed to such confirmed apportionment or agreement for giving land, or any sealed copy thereof, shall be deemed satisfactory evidence of the matters therein recited or stated, or of the accuracy of such plan.[a]

Recitals to be Evidence of Facts recited.

65. And be it enacted, that the commissioners, if they shall see fit, before confirming any agreement,[b] award,[c] or apportionment,[d] may require notice thereof to be given in such manner as they shall direct to the person next in remainder, reversion, or expectancy of an estate of inheritance in any lands or tithes, or any other person to whom they may think notice ought to be given, and may by themselves or by some assistant commissioner hear and determine any objection made to such confirmation by any person interested therein, and may direct any award or apportionment to be amended accordingly.[e]

Commissioners may require notice of Agreements or Awards to be given to Reversioner.

66. And be it enacted, that no confirmed agreement, award, or apportionment shall be impeached after the confirmation thereof, by reason of any mistake or informality therein, or in any proceeding relating thereunto.[f]

Agreements, Awards, and Apportionments not to be questioned after confirmation.

67. And be it enacted, that from the first day of *January* next following the confirmation of

Lands to be discharged from Tithes,

[a] See 1 Vict. c. 69. § 1, declaring that such recitals or statements are not to be deemed evidence where the apportionment and map are not signed and sealed by the commissioners. But they may be signed by them as evidence of their being the map or plan referred to in the apportionment.

[b] See Clause 27. [c] See Clause 51.

[d] See Clause 63.

[e] See Clauses 24, 44, 45, and note([a]), Clause 63, p. 66.

[f] See note (§), Clause 21, p. 19.

and Rent-charge paid in lieu thereof,

every such apportionment,[a] the lands of the said parish shall be absolutely discharged from the payment of all tithes, except so far as relates to the liability of any tenant at rack-rent dissenting as hereinafter provided,[b] and instead thereof there shall be payable thenceforth to the person in that behalf mentioned in the said apportionment a sum of money equal in value, according to the prices ascertained by the then next preceding advertisement, to the quantity of wheat, barley, and oats, respectively mentioned therein, to be payable instead of the said tithes, in the nature of a rent-charge issuing out of the lands charged therewith; and such yearly sum shall be payable by two equal half-yearly payments, on the first day of *July* and first day of *January* in every year, the first payment, except in the case of barren reclaimed lands, as hereinafter provided, being on the first day of *July* next after the lands shall have been discharged from

being money-value of Grain payable instead of Tithes.

[a] The tithe will be payable up to the 1st of January next, after the date of confirmation of the award, unless under 1 Vict. c. 69. § 11, the parties to a parochial agreement, or to any supplemental agreement which they are thereby authorized to make for the purpose, fix the time of the lands being discharged from tithes, that is, of the rent-charge coming in force on the 1st January next preceding, or the 1st April, 1st July, or 1st October, preceding or following the confirmation of the apportionment. In that case the first half-yearly payment of the rent-charge is to fall due on the expiration of six months from the day fixed for the discharge of the land from tithes, 1 Vict. c. 69. § 11. The same Act, § 10, gives power to the parties to an agreement to provide for the period before the end of the former compositions and the commutation. But on this point the Commissioners in the circular, 27th August, 1838, say, "the tithe Commissioners recommend all tithe-owners to take care that the first instalment of their rent-charge is made due, and that tithe should cease to exist, on some quarter-day after the confirmation of the apportionment. This will prevent the possibility of there being an interval between the signing of the agreement and the confirmation of the apportionment, during which they may find it practically very difficult to collect either tithe or rent-charge."

[b] The case of tenants at rack-rent dissenting from the agreement is provided for Clause 79.

tithes as aforesaid; and such rent-charge may be recovered at the suit of the person entitled thereto, his executors or administrators, by distress and entry as hereinafter mentioned; and after every first day of *January* the sum of money[a] thenceforth payable in respect of such rent-charge shall vary so as always to consist of the price of the same number of bushels and decimal parts of a bushel of wheat, barley, and oats respectively, according to the prices ascertained by the then next preceding advertisement; and any person entitled from time to time to any such varied rent-charge, shall have the same powers for enforcing payment thereof as are herein contained concerning the original rent-charge: Provided always, that nothing herein contained shall be taken to render any person whomsoever personally[b] liable to the payment of any such rent-charge: Provided always, that the rent-charge which shall be apportioned upon any lands in the said parish, which during any part of the said period of seven years preceding *Christmas* one thousand eight hundred and thirty-five were exempted from tithes by reason of having been enclosed under any Act of Parliament, or converted from barren heath or waste ground,[c] shall be payable for the first time on the first day of *July*, or first day of *January* next following the confirmation of the apportionment which shall be nearest to the time at which tithes were or would have become payable for

Rent-charge to be recovered by Distress and Entry,

and to vary every Year, according to prices ascertained at preceding Christmas.

No Person to be personally liable for Rent-charge.

Payment of Rent-charge on reclaimed Lands to be postponed until Tithes would have been due.

[a] See note (b), p. 58, to Clause 57.

[b] By this proviso every one is exempt from a personal action for rent-charge, the land out of which it issues being the sole resource for the arrears. (See Note (a), p. 85, to Clause 85.)

[c] Under 2 & 3 Ed. 6, c. 13. § 5 and 6, barren heath and waste ground, newly brought into cultivation, do not pay tithes till after seven years from their being so cultivated. (See **Clause 45.**)

the first time in respect of the said lands if no commutation thereof had taken place.[a]

Lands in Parish to be free from the Tithes of lands given in commutation.

68. And be it enacted,[b] that from the first day of *January* next following the confirmation of every parochial or other agreement for giving land instead of any tithes or rent-charge, the lands of the parish in which any such agreement shall be made shall be absolutely discharged from the payment of the tithes or rent-charge for which it shall have been agreed that such land shall be given.[c]

Rent-charge to be liable to Parochial and County Rates.

69. And be it enacted, that every rent-charge payable as aforesaid instead of tithes, shall be subject to all parliamentary, parochial, and county and other rates, charges,[d] and assessments, in like manner as the tithes commuted for such rent-charge have heretofore been subject.

How Rates and Charges are to be recovered.

70. And be it enacted, that all rates and charges to which any such rent-charge is liable shall be assessed upon the occupier of the lands out of which such rent-charge shall issue; and in case the same shall not be sooner paid by the owner of the rent-charge for the time being,[e] may

[a] By the operation of this clause, all land brought into cultivation subsequent to the confirmation of the apportionment, and not falling within this proviso, will be thenceforward exempt from tithes or rent-charge.

[b] That is, the gross rent-charge of the parish will be diminished by the value of the rent-charge for which the twenty acres were given, under the 29th and 62d Clauses; but whether that diminution shall specially apply to any particular portion, or to the whole gross sum, will depend on the fact of the land being given by the parish or by an individual. (See Note ([b]), p. 64.)

[c] It would seem that the 1 Vict. c. 69. § 10, 11, applies also to the case of an agreement for giving land.

[d] See Note ([b]), to Clause 37, p. 37; also note to same clause, p. xxii. of Analysis.

[e] As the titheowner often is non-resident, or has no property in the parish except tithes, it would be impossible to collect the rate from him, and the rent-charge cannot be

be recovered from such occupier in like manner as any poor-rate assessed on him in respect of such lands; and any occupier holding such lands under any landlord, and who shall have paid any such rate or charge in respect of any such rent-charge, shall be entitled to deduct the amount thereof from the rent next payable by him to his landlord for the time being, and shall be allowed the same in account with his landlord; and any[a] landlord or owner in possession who shall have paid any such rate or charge, or from whose rent the amount of any such rate or charge in respect of any such rent-charge shall have been so deducted, or who shall have allowed the same in account with any tenant paying the same, shall be entitled to deduct the amount thereof from the rent-charge, or by all other lawful ways and means to recover the same from the owner of the rent-charge, his executors and administrators; provided that the owner of every such rent-charge shall have and be entitled to the like

Occupying Tenant paying the same, may deduct Amount from Rent.

taken by distress for rates. Hence it was necessary to make the occupier liable, giving him a power to deduct the amount from his next payment of rent. Tenants must attend to this, or they may have no remedy for recovery of any rent-charge paid by them. This provision is on the same principle as that which was in force for recovery of the property-tax paid by tenants or incumbrancers. But see 1 Vict. c. 69. § 8, giving power to assess the owners of the rent-charge in the manner there pointed out. In such case, the rates may be recovered from the occupiers, who are to have previous notice of the assessment; and any occupier paying such rates may deduct the amount from his rent.

[a] The rent-charge is by this Act fixed on the landlord. Hence if the occupier pay the rates assessed in respect of the rent-charge, his first claim is on the landlord, who can always deduct the rate from the rent-charge which he has to pay. And when the landowner has so paid it, or allowed the payment to his tenant, he is empowered by this clause to deduct it from the rent-charge, in account with its owner. If through any cause he may have paid the full rent-charge without providing for the deduction, he may still have his remedy under the words, "by other lawful ways and means to recover the same."

right of demanding, inspecting,[a] and taking copies of every assessment containing such rate or charge, and of appeal against the same, and the like power of prosecuting such appeal, and the like remedies in respect thereof, as any occupier or rate-payer has or may have in the case of poor-rates, although such rate or charge is herein made assessable upon the occupier, and the owner of the rent-charge is not mentioned by name in such assessment.

Rent-charge to be subject to the same encumbrances and incidents as Tithe before this Act.

71. And be it enacted,[b] that any person having any interest in or claim to any tithes, or to any charge or encumbrance upon any tithes, before the passing of this Act, shall have the same right to or claim upon the rent-charge for which the same shall be commuted as he had to or upon the tithes, and shall be entitled to have the like remedies for recovering the same as if his right or claim to or upon the rent-charge had accrued after the commutation; provided that nothing herein contained shall give validity to any mortgage or other encumbrance which before the passing of this Act was invalid or could not be enforced; and every estate for life, or other greater estate, in any such rent-charge, shall be taken to be an estate of freehold;[c] and every estate in any such rent-charge shall be subject to the same liabilities and incidents as the like estate in the tithes commuted for such rent-

Estates for Lives, or greater Estates, Estates of Freehold.

[a] The occupier who is assessed has no interest in appealing; hence this right of inspecting the rate, and of appeal against it, is necessary as a protection to the owner of the rent-charge from being fixed with undue assessment.

[b] The effect of the first part of this clause is merely to put rent-charge and tithes on the same footing as to encumbrances, and charges existing, previous to the passing of the Act.

[c] This places the rent-charge on the same footing as tithes, which are a freehold, though issuing perhaps out of copyhold property. But see 1 & 2 Vict. c. 69. § 4, declaratory of the power to merge tithes or rent-charge arising out of copyhold.

charge;[a] and where any lands were exempted from tithe whilst in the occupation of the owner thereof by reason of being glebe, or of having been heretofore parcel of the possessions of any privileged order, the same lands shall be in like manner exempted from the payment of the rent-charge apportioned on them whilst in the occupation of the owner thereof; and where by virtue of any Act or Acts of Parliament heretofore passed, any tithes are authorized to be sold, exchanged, appropriated, or applied in any way, the rent-charges for which such tithes may be commuted under the provisions of this Act, or any part thereof, shall or may be saleable or exchangeable, appropriated and applied, to all intents and purposes, in like manner as such tithes; and the same powers of sale, exchange, and appropriation shall in all such cases extend to and may be exercised in respect of the said commutation rent-charges;[b] and the money to arise by the sale of such rent-charges shall or may be invested, appropriated, and applied to the same purposes and in like manner as the money to

Provision for certain Exemptions,

and for cases of Tithes commuted under Local Acts.

[a] As dower, liability to sequestration in case of ecclesiastical tithe, liability to provide a curate, or to repair the chancel, and the like. There seems, however, some difficulty as to the keeping up these charges, if the power to merge given at the end of this clause, and by 1 & 2 Vict. c. 64. be exercised. The presumption is that the land, in which the tithes or rent-charge are merged, would be subjected to the charges of this description which existed before the merger; or it may be held that the parties, in whose favour the charges are made, are *pro tanto* owners of the fee, and hence that without their consent, or some arrangement with them, the merger to the extent of the charge cannot be made. In no case will the commissioners permit a merger of *tithes*, where such charges exist. The merger can then only apply to the rent-charge for which the tithes are commuted, the charges in question being fixed on the lands.

[b] This provision places rent-charges under this Act on the same footing as tithes commuted under local Acts. Tithes so commuted may be converted into rent-charges by special agreement under § 90.

arise by the sale of any such tithes might have been invested, appropriated and applied under such particular Act or Acts in case this Act had not been passed; and no such rent-charge shall merge or be extinguished in any estate of which the person for the time being entitled to such rent-charge may be seized or possessed in the lands on which the same shall be charged: Provided always, that it shall be lawful for any person seized in possession of an estate, in fee-simple or fee-tail of any tithes or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the said commissioners shall approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of the same, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands on which the same shall have been charged.[a]

Rent-charge not to merge,

but Tenant in Fee may declare the same merged.

Apportionment may be altered

72. And be it enacted, that if at any time subsequent to the confirmation of any such

[a] This power is analogous to the power for redeeming or purchasing the land-tax.

By 1 Vict. c. 69. § 12, and 1 & 2 Vict. c. 64. § 2, deeds of merger are exempted from stamp duty. The latter Act, § 1 and 3, extends the power to merge to all persons who, alone or together, have the power of acquiring or disposing of the fee-simple of any tithes or rent-charge, and to tenants for life of tithes and lands settled to the same uses; and if the commissioners, in any such case, approve of the form of deed, the strict formalities otherwise essential to any instrument for acquiring or disposing of such fee-simple, may be dispensed with. The commissioners supply a very simple form of deed of merger, and in all cases require the draft to be sent for approval before engrossment. They are not required to investigate the title of the parties desiring to merge, who must do so at their own risk; and the merger may be effected either by a separate deed, or in the parochial agreement. One of the chief advantages of merger is, that it saves to the landowner his proportion of the expense of survey, valuation, and mapping. The deeds or declarations of merger are required to be executed in duplicate; one part being filed with the Commissioners, and the other, with their certificate of allowance endorsed, retained by the parties.

instrument of apportionment the owner of any lands charged with any such rent-charge shall be desirous that the apportionment thereof shall be altered,[a] it shall be lawful for the commissioners of land tax for the county or place where the said lands are situate, or any three of them, to alter the apportionment in such manner and in such proportion and to the exclusion of such of the lands as the landowner, with the consent of two justices of the peace acting for the county, riding, division, or other jurisdiction in which the lands are situated, may direct; and such altered apportionment shall be made by an instrument in writing under the hands and seals of the said commissioners of land tax and of the said landowner and justices, of the like form and tenor as to the said lands as the original apportionment, and bearing date the day of its execution by the said commissioners of land tax, subject to the provision hereinbefore contained with respect to the value of lands on which any rent-charge may be charged on account of the tithes of any other lands;[b] and every such altered apportionment shall be as valid as if made and confirmed by the tithe commissioners as aforesaid, and shall be taken to be an amendment of the original apportionment; and in every such case two counterparts of the instrument of altered

by Commissioners of Land-tax, if desired.

Mode of effecting this.

[a] In case any landowner be desirous of effecting a new apportionment, so as to sell part of his lands, free of rent-charge, and have made no special apportionment under the provisions of Clause 58, previous to the award being confirmed by the commissioners, this clause enables him to do it, through the machinery of the land-tax commissioners, and two justices; the effect is the same as Clause 58. The reference to the commissioners of the land-tax provides a good local authority, as evidence of the fairness of the proceeding; and the choice of the land-tax commissioners is similar to that which was adopted under the Property-tax Acts, where they were chosen as the commissioners of appeal under those Acts. See Clause 58, and Note (b), p. 59; also 1 Vict. c. 69. § 9.

[b] See Clause 58.

apportionment, under the hands and seals of the said commissioners of land tax and justices and landowner, shall be sent, one to the registrar of the diocese, and one to the incumbent and church or chapel wardens, or other person having the custody of the other copy of the original instrument of apportionment; and one counterpart shall be annexed to the copy of the instrument of apportionment in the custody of the registrar and such other person respectively, and taken to be an amendment thereof; and thenceforward such lands shall be charged only according to such altered apportionment; and all expenses of such alteration shall be borne by the landowner desiring the same.

Expenses of Witnesses to be paid under the direction of the Commissioners.

73. And be it enacted,[a] that the commissioners or assistant commissioner, in any case where they or he may see fit, may order such expenses of witnesses, and of the production of any books, deeds, contracts, agreements, accounts, or writings, terriers, maps, plans, and surveys, or copies thereof, and all other expenses (except the salary or allowance to any commissioner or assistant commissioner) incurred in the settlement of any suit or difference, or in the hearing and determining any objection to any award or apportionment before the said commissioners or any assistant commissioner, to be paid by such parties interested in the production thereof respectively, or in the event of such suit, difference, or objection, and in such proportions as the commissioners or assistant commissioner shall think fit and reasonable.[b]

[a] The expenses of witnesses, production of books, &c. may be beneficial to both landowners and titheowners, or either, and hence the commissioners may award the expenses as the case may require, and according to the interest of the parties.

[b] As to expenses under the Clauses 73 to 78 inclusive, see Report of Commissioners, 1st May, 1838, p. 127, *post*.

Expenses of making any Award to be paid by the Landowners and Tithe-owners as the Commissioners may direct.

74. And be it enacted,[a] that the allowances to and expenses of land surveyors and tithe valuers necessary for making any award, and all other expenses of or incident to making the said award, except the salary or allowance to any commissioner or assistant commissioner, and except any expenses which the commissioners or any assistant commissioner, or any court or arbitrator, may be authorized to order and may have ordered to be otherwise paid, shall be borne and paid by the landowners and tithe-owners interested in the said award, in such proportion, time, and manner as the commissioners or assistant commissioner shall direct.

Expenses of Apportionment to be borne ratably by the Landowners.

75. And be it enacted,[b] that all the expenses of or incident to making any apportionment (except the salary or allowance to any commissioner or assistant commissioner, and except any expense which the commissioners or assistant commissioner may be authorized and may have ordered to be otherwise paid,) shall be borne and paid by the owners of lands included in the apportionment in ratable proportion to the sum charged on the said lands in lieu of tithes by such apportionment.

Expenses may be recovered by Warrant of Distress.

76. And be it enacted, that if any difference shall arise touching the said expenses, or the share thereof to be paid by any person, it shall be lawful for the commissioners or some assistant commissioner to certify under their or his hand the amount to be paid by such person; and in

[a] Titheowner and landowner are both interested in this award, and hence the commissioners have only to fix the proportion of expense to be borne by each.

[b] The apportionment of the gross rent-charge being a matter concerning the landowners alone, they alone are to bear the expenses. This includes the expense of the copies required under Clause 64.

case any person shall neglect or refuse to pay his share so certified to be payable by him, and upon the production of such certificate before any two justices of the peace for the county or other jurisdiction wherein the lands mentioned in the agreement or award or apportionment are situate, such justices, upon the non-payment thereof, are hereby required, by warrant under their hands and seals, to cause the same and the costs of the distress to be levied by distress and sale of the goods of the person liable to pay the same, and to render the surplus (if any), after deducting the charges of the distress and sale, to the person distrained upon.

Owners of particular Estates may charge the Costs on the Estate for Twenty Years.

77. And be it enacted, that every owner of an estate in land or tithes less in the whole than an immediate estate of fee-simple or fee-tail, or which shall be settled upon any uses or trusts, may, with the consent of the commissioners, and in such manner as they may direct, charge so much of the expenses of commutation as is to be defrayed by him, or any part thereof, and the interest thereon, after the rate of four pounds by the hundred, upon the lands whereof the tithes are commuted, or upon the rent-charge to be received by him instead of such tithes respectively; but so nevertheless that the charge upon such lands or rent-charge respectively shall be lessened in every year following such commutation by one-twentieth part at least of the whole original charge thereon.

Costs of Ecclesiastical Titheowners may be charged on the Benefice for Twenty Years.

78. And be it enacted, that every ecclesiastical beneficed person who shall commute the tithes of his benefice under this Act, may advance or borrow the sum necessary to defray so much of the expenses of commutation as is to be defrayed by him, or any part thereof, and as a

security for repayment may charge or assign the rent-charge to be received instead of such tithes for twenty years, or until the principal sum advanced or borrowed, and the interest thereon, after the rate of four pounds by the hundred, and the expenses of such charge or assignment, shall be sooner paid; and every incumbent successively shall pay the interest of the sum advanced or borrowed, or of so much thereof as shall then remain unpaid, as the same shall become due, or within one calendar month next following, and also an instalment at the rate of five pounds for every hundred pounds of the principal sum advanced or borrowed; and in default of such payment the ordinary may sequester the profits of the benefice until such payments shall be made: Provided that the sum to be so advanced or borrowed shall be ascertained and certified under the hand of any commissioner or assistant commissioner, and shall be by him stated to have been the amount of such expenses properly incurred by such ecclesiastical beneficed person in relation to such commutation.

If Tenant of Lands at Rack-rent dissent from paying the Rent-charge, the Landlord may take the Tithes during the Tenancy.

79. And be it enacted, that any tenant or occupier who at the time of such commutation shall occupy at rack-rent any lands of which the tithes shall be so commuted, may, within one calendar month next after the confirmation of the apportionment by the commissioners, signify by writing under his hand, given to or left at the usual residence of his landlord or his agent, his dissent from being bound to pay any rent-charge apportioned and charged on the said lands as aforesaid,[a] and in that case such landlord shall

[a] It is scarcely probable that any tenant will dissent from paying a rent-charge in preference to having his tithes taken in kind; but should there be such a case, this clause provides

be entitled, from the time when the said apportionment shall take effect, and during the tenancy or occupation of such tenant or occupier, to stand, as to the perception and collection of tithes, or receipt of any composition instead thereof, in the place of the owner of the tithes so commuted, and to have all the powers and remedies for enforcing render and payment of such tithes or composition which the titheowner would have had if the commutation had not taken place.[a]

Tenant paying Rent-charge to be allowed the same in account with his Landlord.

80. And be it enacted, that any tenant or occupier at the time of such commutation who shall have signified his dissent from being bound to pay any such rent-charge as aforesaid, or who shall hold his lands under a lease or agreement, providing that the same shall be holden and enjoyed by him free of tithes, and every tenant or occupier who shall occupy any lands by any lease or agreement made subsequently to such commutation, and who shall pay any such rent-charge, shall be entitled to deduct the amount thereof from the rent payable by him to his landlord, and shall be allowed the same in account with the said landlord.[b]

When Rent-charge is in arrear for 21 Days after half-yearly days of pay-

81. And be it enacted, that in case the said rent-charge shall at any time be in arrear and unpaid for the space of twenty-one days next after any half-yearly day of payment, it shall be lawful for the person entitled to the same, after

for it, and enables such a party to continue paying tithes to his landlord, who having commuted, will pay the rent-charge to its owner, but becomes the titheowner as between himself and his tenant. Tenants wishing to dissent should observe the provisions of this clause.

[a] See Note (a), p. xxxiii. of Analysis.

[b] See also 1 Vict. c. 69. § 8, as to recovery of rates from tenants, and their retention of the amount paid, from the rent-charge.

having given or left ten days' notice in writing at the usual or last known residence of the tenant in possession, to distrain upon the lands liable to the payment thereof, or on any part thereof, for all arrears of the said rent-charge, and to dispose of the distress when taken, and otherwise to act and demean himself in relation thereto as any landlord may for arrears of rent reserved on a common lease for years: Provided that not more than two years' arrears shall at any time be recoverable by distress.

ment, the person entitled thereto may distrain.

No more than two years' arrears to be recoverable.

82. And be it enacted, that in case the said rent-charge shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, and there shall be no sufficient distress on the premises liable to the payment thereof, it shall be lawful for any judge of His Majesty's courts of record at *Westminster*, upon affidavit of the facts, to order a writ to be issued, directed to the sheriff of the county in which the lands chargeable with the rent-charge are situated, requiring the said sheriff to summon a jury to assess the arrears of rent-charge remaining unpaid, and to return the inquisition thereupon taken to some one of His Majesty's courts of law at *Westminster*, on a day therein to be named, either in term time or vacation; a copy of which writ, and notice of the time and place of executing the same, shall be given to the owner of the land, or left at his last known place of abode, or with his known agent, ten days previous to the execution thereof; and the sheriff is hereby required to execute such writ according to the exigency thereof; and the costs of such inquisition shall be taxed by the proper officer of the court; and thereupon the owner of the rent-charge may sue out a writ of habere facias possessionem, directed to the sheriff, command-

When Rent-charges are in arrear for 40 Days after half-yearly days of payment, and no sufficient Distress on the premises, Writ to be issued directing Sheriff to summon Jury to assess arrears.

ing him to cause the owner of the rent-charge to have possession[a] of the lands chargeable therewith until the arrears of rent-charge found to be due, and the said costs, and also the costs of such writ and of executing the same, and of cultivating and keeping possession of the lands, shall be fully satisfied: Provided always, that not more than two years' arrears over and above the time of such possession shall be at any time recoverable.

Account, how to be rendered.

83. And be it enacted,[b] that it shall be lawful for the court out of which such writ shall have issued, or any judge at chambers, to order the owner of the rent-charge who shall be in possession by virtue of such writ, from time to time to render an account of the rents and produce of the lands and of the receipts and payments in respect of the same, and to pay over the surplus (if any) to the person for the time being entitled thereunto, after satisfaction of such arrears of rent-charge and all costs and expenses as aforesaid and thereupon to order a writ of supersedeas to issue to the said writ of habere facias possessionem, and also by rule or order of such court

[a] The powers of distress and entry are incidental to every case of ordinary rent-charge. The remedy here provided is cheaper and more expeditious than an ejectment, being similar to an inquisition on judgment.

[b] This clause provides for rendering an account of the rents and produce whilst the lands are held by the titheowner under the powers of entry. The remedy of taking this account before a judge at chambers, instead of the costly process of a chancery suit, is infinitely less burthensome, and far more efficient for all parties. Whenever this power is put in force it will behove the titheowner to be very careful in taking and keeping an accurate account of all his costs, outlay of capital, and returns, and to preserve vouchers for each. The want of vouchers is a very common case with idle or negligent accounting parties; but as they are the only sure protection to the person entitled to call for the account, it is injustice to him to allow any item not duly vouched.

or judge from time to time to give such summary relief to the parties as to the said court or judge shall seem fit.

How to proceed in case of Quakers

84. Provided always, and be it enacted,[a] that in all cases in which it shall be necessary to make any distress under this Act in respect of any lands in the possession of any person of the persuasion of the people called Quakers, the same may be made upon the goods, chattels, or effects of such person, whether on the premises or elsewhere, but nevertheless to the same amount only and with the same consequences in all respects as if made on the premises; and that in all cases of distress under this Act upon persons of that persuasion, the goods, chattels, or effects which may be distrained,[b] shall be sold without its being necessary to impound or keep the same: Provided always, that no writ under the provision hereinbefore contained shall be issued for assessing or recovering any rent-charge payable under this Act, in respect of any lands in the possession of any person of the persuasion aforesaid, unless the same shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, without the person entitled thereto being able to find goods, chattels, or effects, either on the premises or elsewhere, liable to be distrained as aforesaid, sufficient to satisfy the arrears to which such lands are

[a] By 7 & 8 W. 3. c. 34, two justices are empowered to convene before them any Quaker refusing to pay tithes, and to distrain for the amount, if under 10*l.*, with a power of appeal to the quarter sessions. This provision is made perpetual by 1 Geo. 1. stat. 2, c. 6, and extended to 50*l.* by 53 Geo. 3. c. 127, § 6. See also 5 & 6 W. 4. c. 72.

[b] The provision that it shall not be necessary to impound the distress, is an advantage to the person who distrains, as the distress may be sold instanter. The clause was introduced at the request of some highly respectable members of the Society of Friends, and settled to their satisfaction.

liable, together with the reasonable costs of such distress.

Powers of Distress and Entry to extend to all Lands within the Parish, occupied by the owner, or under the same Landlord or holding.

85. And be it enacted, that whenever any rent-charge payable under the provisions of this Act shall be in arrear, notwithstanding any apportionment which may have been made of any such rent-charge, every part of the land situate in the parish in which such rent-charge shall so be in arrear, and which shall be occupied by the same person who shall be the occupier of the lands on which such rent-charge so in arrear shall have been charged, whether such land shall be occupied by the person occupying the same as the owner thereof or as tenant thereof, holding under the same landlord under whom he occupies the land [a] on which such rent-charge so in arrear shall have been charged, shall be liable to be distrained upon or entered upon as aforesaid for the purpose of satisfying any arrears of such rent-charge, whether chargeable on the lands on which such distress is taken or such entry made, or upon any other part of the lands so occupied or holden: Provided always, that no land shall be liable to be distrained or entered upon for the purpose of satisfying any such rent-charge charged upon lands which shall

No Land liable to be distrained on for Rent-charge of Lands washed away, &c.

[a] A provision to prevent the shifting of goods, and so avoiding the distress. The effect of the clause is to extend the power of distress over all the lands in the parish occupied by the person having to pay the rent-charge, if he be the owner of the lands subject to it, or over all the lands of such owner held by the tenant of the land subject to the rent-charge. Thus, if A. be owner and occupier of White-acre, and occupier only of Black-acre, B., the titheowner, may distrain and enter for arrears of rent-charge issuing out of Black-acre, on both White and Black-acre, so long as A. occupies both. Or if the rent-charge in arrear be issuing out of Black-acre, and if A. be tenant of both, under C., B,, the titheowner, may enter on either or both for the rent-charge of either or both. See 1 Vict. c. 69. § 8.

have been washed away by the sea, or otherwise destroyed by any natural casualty.[a]

Powers of 4 & 5 W. 4. to extend to Rent-charges under this Act.

86. And be it enacted, that the several provisions of an Act passed in the fourth and fifth years of His present Majesty, intituled, *An Act to amend an Act of the Eleventh Year of King* George *the Second, respecting the Apportionment of Rents, Annuities, and other periodical Payments*, shall extend to all rent-charges payable under this Act.[b]

Provisions for the sale of Buildings and the sites thereof rendered useless or unnecessary by the Commutation of Tithes.

87. And be it enacted, that if any barns or buildings belonging to any titheowner, having a limited estate or interest therein, which shall have been generally used for the housing of tithes paid in kind, shall be rendered in the whole or in part useless by reason of any commutation of tithes under this Act, it shall be lawful for every such titheowner[c] (with the consent, nevertheless, of the commissioners, and subject to such directions as they may give, to be signified under their hands and seal,) to pull down any such barns or buildings, or any part thereof, and to sell and dispose of the materials, or to sell and dispose of all or any of such barns or buildings, and the site thereof, and either with or without any farm buildings or homesteads thereunto belonging, in such manner as the commissioners may direct; and upon pay-

[a] In those cases where the land is, in fact, lost or destroyed, the claim to rent-charge is gone also; as there is no personal liability to its payment. (See note [b] to Clause 67, p. 69.)

[b] That is, the amount is apportionable, as if it accrued *de die in diem*, and goes between heirs and executors, or, on a change of incumbency, between the representatives of the former incumbent and his successor, up to the day on which the change occurs.

[c] It is to be observed that the consent of the commissioners is essential to any sale under this provision, and they alone can direct how the proceeds are to be disposed of.

ment of the consideration money, it shall be lawful for every such titheowner (with such consent as aforesaid) to convey and deliver the premises sold as aforesaid to the purchaser thereof, or to such uses and in such manner as such purchaser shall direct; and the consideration money in each case shall be paid to such titheowner, and his receipt shall be a good discharge to the purchaser; and such titheowner shall lay out and invest the consideration money in such manner and for such trusts as the commissioners shall direct for the benefit of the persons entitled to the said rent-charge.

Leases of Tithes may be surrendered.

88. And be it enacted, that it shall be lawful for the lessee[a] being in occupation of any tithes commuted under this Act, by an instrument in writing under his hand and seal, to be made in such form as the commissioners shall direct, and confirmed under their seal, to surrender and make void the lease by which the said tithes are held or enjoyed by such lessee at the time of the commutation, so far as the same may relate to the said tithes; and it shall be lawful for the commissioners, by the same instrument, to direct what compensation (if any) shall be given by the immediate lessor of any lessee at rack-rent so surrendering any lease of any such tithes to such lessee,[b] and what allowance (if any)

[a] Any lessee, to avail himself of this clause, must be in the occupation of the tithes. On the surrender of such a lessee to an intermediate lessor, the latter, by the proviso at the end of this clause, is deemed to have become the lessee in occupation, and so forth, till the first lessor of the tithes is arrived at.

[b] Suppose, for instance, that A. has made a beneficial lease to B. of lands and tithes, containing covenants for the repair of the farm buildings; possibly B. would not have taken the land unless he could have had the tithes with it; and, upon surrendering his lease, A. ought to make allowance for the benefit of the lease, and B. for the non-fulfilment of his covenant. But it would seem that under the general wording of this

shall be made by any lessee to his immediate lessor of any such surrendered lease, in consideration of the non-fulfilment of any conditions contained in such lease, and what deduction (if any) shall be made from the rent thenceforth payable by any lessee to his immediate lessor in respect of other hereditaments[a] which may have been included with the said tithes in any such lease: Provided always, that any intermediate lessor to whom any such lease shall have been surrendered shall, as regards his immediate lessor, be taken to be the lessee in occupation of the tithes included in the said lease.

Tithes due before Commutation, not to be affected.

89. And be it enacted, that nothing in this Act contained shall affect any right to any tithes which shall have become due before the commutation.[b]

Act not to extend to Easter-Offerings, &c. or to payments instead of

90. And be it enacted, that nothing in this Act contained, unless by special provision to be inserted in some parochial agreement, and specially approved by the commissioners, in which case the same shall be valid,[c] shall extend to

clause, the commissioners may direct compensation to be paid for diminution of rent occasioned by the commutation, as well as for non-fulfilment of any other condition of the lease proposed to be surrendered.

Some anxiety has prevailed, both on the part of lessors and lessees, as to the prospect or propriety of renewing dean and chapter leases, and leases of the like kind. It is to be borne in mind, that their relative position remains the same; for the lessor will be anxious for his fine, and so be content to demise his rent-charge at a sacrifice; and the lessee, for the sake of that sacrifice, will be content to renew. The Act will destroy speculation, grounded on the uncertainty of the property, and confine the risk and anxiety to the collection of the rent-charges from a numerous body of payers.

[a] As, for instance, when lands are let jointly with the tithes.

[b] But see 1 Vict. c. 69. § 10.

[c] The commissioners may, under this clause, deal with tithes already commuted, where those interested in such tithes desire it by any parochial agreement to which they are parties.

Tithes in London, or to permanent Rent-charges by custom or Act of Parliament.

any Easter offerings, mortuaries or surplice fees, or to the tithes of fish or of fishing, or to any personal tithes other than the tithes of mills, or any mineral tithes, or to any payment instead of tithes arising or growing due within the city of *London*, or to any permanent rent-charge or other rent or payment in lieu of tithes, calculated according to any rate or proportion in the pound on the rent or value of any houses or lands in any city or town under any custom or private Act of Parliament, or to any lands or tenements the tithes whereof shall have been already perpetually commuted or extinguished under any Act of Parliament heretofore made.[a]

Advertisements, Contracts, and Awards not to be liable to Stamp Duty.

91. And be it enacted, that no advertisement inserted by direction of the commissioners or any assistant commissioner, or by any titheowner or

In such case the agreement must contain a stipulation to that effect, whether the whole, or only a part of the parish has been commuted. But having reference to Clause 17, in conjunction with Clause 90, it does not appear that the commissioners can apply the provisions of the Act to lands of any person, whose tithe is already commuted by Act of Parliament, without his concurrence in the agreement. It has, however, been doubted whether the special provision allowed to be made by this clause is not to be read as limited to the first class of matters here enumerated, *i. e.* Easter-offerings, mortuaries, or surplice fees.

[a] There are some descriptions of tithe, which, though partly derived, indirectly, from the land, cannot properly be charged on any specific lands, except it be on the premises in which those animals are kept, by which they are directly produced: such are the tithes of the milk and calves of stall-fed cows, and of pigs, poultry, &c. kept in villages or towns. The inconvenience of fixing a permanent rent-charge in lieu of a tithe so transitory and intermitting, was foreseen, and a proviso was therefore framed, excepting them from the operation of this Bill, which, however, was rejected. The consequences are, that supposing sixty or one hundred cows to be now kept, and milked in sheds, the tithe of their milk and calves must be perpetuated against the whole parish, and apportioned by valuers or by the commissioners on some lands or premises in that parish. It is much to be feared that this will put difficulties in the way of the voluntary adoption of

landowner, in the *London Gazette*, or in any newspaper, for the purpose of carrying into effect any provision of this Act, and no agreement, award, or power of attorney made or confirmed or used under this Act, shall be chargeable with any stamp duty.[a]

Correspondence of Commissioners, relating to this Act, to be free of Postage.

92. And be it enacted, that the said commissioners may receive and send by the general post from and to places in *England* and *Wales* all letters and packets relating exclusively to the execution of this Act, free from the duty of postage, provided that such letters and packets as shall be sent to the said commissioners be directed to the "Tithe Commissioners for *England* and *Wales*," at their office in *London*, and that all such letters and packets as shall be sent by the said commissioners shall be in covers, with the words "Tithe Commissioners for *England* and *Wales*" printed on the same, and be signed on the outside thereof under such words with the name of such person in his own handwriting as the said commissioners, with the consent of the lords commissioners of the treasury or any three or more of them, shall appoint, (such name to be from time to time sent to the secretary of the General Post-Office in *London*,) and be sealed with the seal of the said commissioners, and under such other regulations as the said lords commissioners, or any three or more of them, shall think fit; and if the person so to be appointed shall subscribe or seal any letter or packet whatever, except such only concerning which he shall receive the special direction of his superior officer, or which he

the Bill in all places where more than a trifling amount of such tithe exists. It is of importance that all parties should be aware of the difficulty.

[a] This exemption is extended to deeds and declarations for the commutation, release or merger of tithes, by 1 Vict. c. 69. § 11, and 1 & 2 Vict. c. 64. § 2.

shall himself know to relate exclusively to the execution of this Act, or if the person so to be appointed, or any other person, shall send or cause to be sent under any such cover any letter, paper, or writing, or any inclosure, other than shall relate exclusively to the execution of this Act, every person so offending shall forfeit and pay the sum of one hundred pounds, and be dismissed from his office; one moiety of such penalty shall be paid to the use of His Majesty, his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same; and every such penalty may be sued for and recovered in any of His Majesty's courts of record in *Westminster*.

False Evidence to be deemed Perjury; withholding Evidence a Misdemeanor.

93. And be it enacted, that if any person, under the provisions of this Act, shall wilfully give false evidence, he shall be deemed guilty of perjury; and if any person shall make or subscribe a false affidavit or declaration for the purposes of this Act, he shall suffer the penalties of perjury; and if any person shall wilfully refuse to attend in obedience to any lawful summons of any commissioner or assistant commissioner, or to give evidence, or shall wilfully alter, withhold, destroy, or refuse to produce any book, deed, contract, agreement, account, or writing, terrier, map, plan or survey, or any copy of the same, which may be lawfully required to be produced before the said commissioners or assistant commissioner, he shall be deemed guilty of a misdemeanor.

Limitation of Actions against Commissioners, Assistant Commissioners, Justices, &c.

94. And be it enacted, that no action or suit shall be commenced against any commissioner, assistant commissioner, justice of the peace, valuer, umpire, or surveyor, for anything done under the authority of this Act, until twenty-one

days' notice thereof shall have been given in writing to the party against whom such action or suit is intended to be brought, or after sufficient satisfaction or tender of amends shall have been made to any party aggrieved, or after three calendar months shall have expired from the commission of the act for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried in the county or place where the cause of action shall have arisen, and not in any other county or place; and if it shall appear that such notice of action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient amends were made or tendered as aforesaid, or if any such action or suit shall not be commenced within the time before limited in that behalf, or such action shall be laid in any county or place other than as aforesaid, then the jury shall find a verdict for the defendant therein, or the court, upon summary application by motion in any such suit, may dismiss the same against such defendant; and if a verdict shall be found for such defendant, or such suit shall be dismissed upon application as aforesaid, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if upon any demurrer in such action or suit judgment shall be given for the defendant therein, then such defendant shall have costs, charges, and expenses as between attorney and client.

Proceedings under this Act not to be quashed for want of form, nor to be removed by Certiorari.

95. And be it enacted, that no order, adjudication, or proceeding made or had by or before the commissioners or any assistant commissioner under the authority of this Act, or any proceeding to be had touching any offender against this Act, shall be quashed for want of form, or be

removed or removable by certiorari, or any other writ or process, into any of His Majesty's courts of record at *Westminster*, or elsewhere.[a]

Limits of Act.

96. And be it enacted, that this Act shall extend only to *England* and *Wales*.[b]

May be amended, &c. this Session.

97. And be it further enacted, that this Act may be amended, altered or repealed by any Act or Acts to be passed in this present Session of Parliament.

[a] This section applies to proceedings under 1 Vict. c. 69. and 1 & 2 Vict. c. 64. except as to orders of commissioners or assistant commissioners respecting boundaries under § 2 of the former Act, by the 3d section of which such orders are removable by certiorari into the Court of Queen's Bench, under the restrictions there prescribed.

[b] The 14th section of the 1 Vict. c. 69. declares that it shall be taken to be a part of the Act for the Commutation of Tithes for England and Wales, and the Act 1 & 2 Vict. c. 64. § 5 and 6, gives to it the interpretation and limits of the Tithe Commutation Act.

ACT

TO AMEND AN ACT FOR

THE COMMUTATION OF TITHES

IN ENGLAND AND WALES.

INTRODUCTION AND ANALYSIS.

Notwithstanding the satisfactory way in which the Tithe Commutation Act was found to work during the first few months of its coming into operation, great impediments were felt, and still greater anticipated, on account of the expense of providing maps to be tested, approved, and confirmed as accurate by the Commissioners.

To obviate this difficulty, and upon the recommendation of the Select Committee on the Survey of Parishes (1837), the Act 1 Vict. c. 69. was passed, having for its principal object the relieving the Tithe Commissioners from the obligation imposed on them of ascertaining and attesting the accuracy of the maps thus submitted for their confirmation, under 6 & 7 Wm. 4. c. 71. §§ 35, 55, 60, 63 & 64.

But it is to be observed that the present Act does

1 Vict. c. 69.

not do away with the necessity of having a map or plan. The main object of the Act is to enable the landowners to give full effect to the 35th section, and adopt existing plans, taking care to observe the requirements of that clause, which provides that such plans must be adopted at a parochial meeting, and that "three-fourths of the landowners in number and value "shall concur therein." (See 6 & 7 Wm. 4. c. 71. § 35; and 1 Vict. c. 69. § 1).

It may also be remarked, that there is nothing in the new Act to preclude the Commissioners from giving the legal weight and authority of their signatures and seal to maps or plans, of the accuracy of which they shall be satisfied.

The landowners will therefore have it in their power to strike a balance between the expense and the advantage of obtaining maps, of which the accuracy may be thus attested. And as regards the immediate question of tithes and rent-charge, it is obviously the interest of both titheowner and tithepayer, that at least sufficient accuracy should be attained to enable them to distinguish the boundaries of the lands out of which the rent-charge is to issue. The want of sufficient accuracy in this respect, would, it may be assumed, be a ground of objection by either party to any award or apportionment, under Clauses 51 and 61; and when it is recollected that in this case, as in every other where a majority decides a point, the objectors will be found in the minority, or as being absent from the meeting, or amongst the class of minors, or cestuique trusts, it will be important not to leave occasion for guardians, committees, trustees, reversioners, or their representatives, to raise

future disputes, because the present tenants in possession have not deemed the accuracy of a map or plan so important as the temporary pecuniary advantage gained by the adoption of an inaccurate map.

Such is the object of the 1st and principal clause in the Act. The other provisions give to the Commissioners and their assistants the power of determining the boundaries of parishes or districts (2), their decision being removable by writ of certiorari to the Queen's Bench by dissatisfied parties (3). The omission from the apportionment of the detail of corn-rents charged on separate closes, required by 6 and 7 Wm. 4. c. 71. § 57 & 67, is permitted (4). The detail of the culture, and even of the amount charged on the several closes of land, may also be omitted from voluntary apportionments, if three-fourths of the landowners require it (5). And when there is only one landowner, the necessity imposed on the Commissioners by Clause 61, of sending the draft of an apportionment to the parish for inspection, and holding a meeting to hear objections, is, in cases of voluntary apportionment, dispensed with (6). The prices on which the conversion into corn of the averages ending Christmas 1835, on which the rent-charge is fixed, and which, by the 56th clause, was required to be published in the Gazette immediately after the passing of the Tithe Commutation Act, are declared (7). The assessments of parish rates on rent-charges, imposed by § 70 on occupiers of the lands out of which they issue, is allowed to be made on the owners (8); and facilities are given to landowners and titheowners, where there are several titheowners in a parish, so to adjust their claims, as to charge any part of their lands in certain

1 Vict. c. 69.

cases, to the exclusion of others; being, in fact, an extension of the 58th clause of the original Act (9). The 67th clause, which provides for the rent-charge commencing on the 1st January or 1st July after the confirmation, having in many cases been found inconvenient, it is provided that a sum may be paid for the interval between the last payment of composition and commencement of rent-charge (10), and that the rent-charge may commence not only on those days, but also on the 1st of September or 1st of October preceding or following the confirmation of the apportionment (11).[a] Deeds and declarations of merger are declared exempt from stamp duty (12), and provision is made for swearing in Assistant Commissioners before two Justices of the Peace, or a Master Extraordinary in Chancery in the country (13). It is finally provided, that the Act shall be deemed a part of the Tithe Commutation Act (14).

[a] But see note (a), p. xxxiii. of Analysis to 6 and 7 Wm. 4. c. 71.

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ACT, &c.

1 VICTORIA, c. 69.

An Act to amend an Act for the Commutation of Tithes in *England* and *Wales*.

[15th July, 1837.]

WHEREAS an Act was passed in the seventh year of the reign of His late Majesty King *William* the Fourth, intituled *An Act for the Commutation of Tithes in England and Wales;* and it is expedient to amend the said Act in certain respects: Be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the Tithe Commissioners for England and Wales shall have power, if they shall think fit, to confirm under their hands and seal any instrument of voluntary apportionment, and also any agreement for giving land instead of tithes, made according to the provisions of the said Act, to which shall be annexed a map or plan agreed to be adopted by a parochial meeting, although they shall not be satisfied of the accuracy of such map or plan, or that the several quantities of land specified in such apportionment or agreement are therein truly stated; but no recital of quantity or admeasurement of land, nor any

6 & 7 W. 4. c. 71.

Apportionments and agreements may be confirmed, although the Commissioners are not satisfied of the accuracy of the maps.

map or plan annexed to any such confirmed apportionment or agreement, nor any copy thereof, shall be deemed evidence of the quantity of land referred to therein, or of the accuracy of such map or plan, unless the said map or plan, as well as the instrument of apportionment or agreement, shall be signed by the commissioners, and sealed with their official seal: Provided always, that the commissioners, in case they shall confirm such voluntary apportionment or agreement, but shall not think proper to seal such map or plan, shall certify under their hands upon some part of such map or plan, that the same is the map or plan referred to in such voluntary apportionment or agreement, as the case may be, which certificate shall be received as evidence of that fact.[a] 1 Vict. c. 69.

[a] This clause enables the Tithe Commissioners, "if they shall think fit," to confirm any instrument of *voluntary* apportionment or agreement for giving land instead of tithes, without certifying the accuracy of the map or plan annexed to the apportionment. But the map or plan thus annexed must have been adopted by a parochial meeting, which the wording of this clause will enable the landowners to call for the purpose of its adoption, instead of requiring such adoption to be made at the parochial meeting for choosing valuers, according to the provisions of the 6 and 7 W. 4. c. 71. § 35.

The maps or plans thus adopted will not be admitted as evidence, unless they have the signature and official seal of the commissioners. Nor will any statement or recital of the quantity or admeasurement of the lands, in the instrument of apportionment be, in such case, evidence. But the signature of the commissioners is required, in order to identify the map or plan as being that adopted by the meeting. The addition of their seal will make it evidence. And although this provision relates only to maps or plans adopted at parochial meetings, it may be desirable that even with new and accurate maps the commissioners' signatures *and seal* should both be obtained, to prevent future cavils or doubts, notwithstanding that the 63d clause of the Tithe Commutation Act only requires their signature. It is not, however, probable that the commissioners will sanction or seal any map of which they have not ascertained the accuracy according to their own test, and by their own assistants. In

1 Vict. c. 69.

For determining parochial boundaries.

2. And be it enacted, that two-thirds in value of the owners of the lands in any parish or district of which the tithes are to be commuted, and respecting the boundaries of which any dispute or doubt shall arise, may, by writing under their hands or the hands of their agents, signed at a parochial meeting called for that purpose, according to the provisions of the said Act, in the case of a parochial meeting for making a voluntary agreement for the commutation of the tithes of a parish, signify their request to the Tithe Commissioners, that the said commissioners should inquire into and settle such[a] boundaries; and thereupon the said commissioners, or any assistant commissioner especially appointed[b] under their hands and seal for that purpose, shall, by examination of witnesses upon oath (which oath the said commissioners or assistant commissioner are and is hereby

no case does it appear that a map can safely be tested unless it be drawn on a scale of at least four chains to an inch. But in all matters relating to surveying and maps, the instructions of Captain Dawson, R.E., the assistant-commissioner, to whom this branch of the business of the office is confided, should be applied for and attended to. It will also be found very desirable for every surveyor to have the instruments which he proposes to use tested in the first instance by Captain Dawson. Surveyors who are desirous of employment under the Act, can also register their names and terms at the office, stating likewise the districts in which they desire to act.

[a] The words "*such* boundaries" would seem to confine the commissioners to the settlement of those in dispute only; but under the subsequent provision for inquiring into, ascertaining, and setting out "the boundaries of that parish or district," it would seem that the power is given to decide disputes between two parishes, as to which of them any detached land may belong, where such a point is made the ground of dispute, and the subject matter is clearly defined. But it does not appear that then they can alter old boundaries, although bound to set out what the boundary, to the best of their judgment, really is.

[b] It does not seem necessary to notify the special appointment in the *Gazette*.

empowered to administer), and also using any other powers contained in the said Act, and by such other legal ways and means as they or he shall think proper, inquire into, ascertain, and set out the boundaries of that parish or district:[a] Provided always, that such commissioners or assistant commissioner (before they or he proceed to set out the boundaries of such parish or district) shall give public notice[b] of their or his intention, by writing under their or his hands or hand, to be affixed on the most public doors of the churches of that parish or district, and of every parish and district thereunto adjoining, and also by advertisement to be inserted in some newspaper circulated in the county in which such parish or district is situated, and also by writing to be delivered to or left ten days at least before the time of setting out such boundaries at the last or usual place of abode of the respective landowners, or the respective agents of such landowner, through or abutting upon whose lands the boundaries of such parish or district are supposed to pass; and such commissioners or assistant commissioner shall, within one month after ascertaining and setting out the boundaries,[c] publish the same by causing a description thereof in writing to be delivered to or left at the place of abode of one of the churchwardens or overseers of the poor of the parish or district of which the boundary shall be so set out, and of every parish or district thereunto adjoining, and also of every landowner or his agent through or abutting upon whose lands the boundary so set out shall pass. 1 Vict. c. 69.

[a] See Note (s), p. 100.

[b] This notice, and the description afterwards required to be sent, need only be given to parishes and landowners contiguous to the boundaries in dispute.

[c] That is, from the making and date of the award.

1 Vict. c. 69.

Judgment of Commissioners respecting boundaries may be removed by Certiorari.

3. And be it enacted, that any person interested in the judgment or determination of the said commissioners or assistant commissioner respecting the said boundaries, who shall be dissatisfied with such determination, may, within six calendar months next after the publication of the said boundaries, by delivering or leaving such description as aforesaid, move the court of Queen's Bench to remove the said judgment by certiorari into the said court,[a] the party making such application giving eight days' notice of such application, and of the matter and ground thereof, in writing, to the said commissioners; and the decision of the said commissioners or assistant commissioner, or, in case of removal as aforesaid, the decision of the said court therein, shall be final and conclusive, as to the boundaries of such parish or district, for all purposes whatsoever; and after the expiration of the said term of six calendar months, the judgment shall not be removed or removable by certiorari or any other writ or process whatsoever into any of Her Majesty's courts of record at Westminster or elsewhere; and no certiorari shall be allowed to remove any such judgment unless the party prosecuting the certiorari shall before allowance thereof enter into a recognizance before one of the justices of the said court, in the sum of fifty pounds, with condition to prosecute the same without wilful delay, and to pay to the said commissioners their full costs and charges within one calendar month after the judgment shall be confirmed, to be taxed according to the custom of the court.[b]

[a] The power to remove an order by writ of certiorari seems confined to boundary decisions. In all other respects the restriction against the writ, given by 6 & 7 W. 4. c. 71. § 95, applies.

[b] This and the preceding clause, giving facilities for determining the boundaries of parishes, are an advantageous

1 VICT. c. 69.

The Apportionment need not contain the several amounts of corn charged.

4. And be it enacted, that it shall not be necessary to state in any instrument of apportionment the several quantities of wheat, barley, and oats charged upon the estate of any landowner, or upon any portion of such estate included in such apportionment; provided that the whole sum agreed or awarded to be paid by way of rent-charge instead of the tithes of the whole parish or district be therein stated, and the whole number of bushels of wheat, barley, and oats ascertained to be the fixed quantity of corn of which the variable value is to be paid in money by way of rent-charge, and also the several sums of money which were at the time of the confirmation of the apportionment of equal value with the quantities of wheat, barley, and oats apportioned on each estate or each separate portion thereof, according to the provisions of the said Act, be also stated therein.[a]

extension of the jurisdiction of the commissioners in that respect, the powers given by §§ 24 and 45 of the Tithe Commutation Act not being well adapted to the more extended cases of parochial boundaries. The decision of the commissioners, or that of an assistant commissioner, to be appointed by them for the purpose, will, if unappealed against, or if confirmed on appeal, be final. It should be a matter of inquiry at every parochial meeting, how far the neighbouring parishes may concur with them in the question of their boundaries, which are not bound by such an award. Thus, unless the accuracy of the maps be ascertained, a parish which has commuted may vary in the description of its boundary from one of its neighbours; and in that case the adjustment of the question may lead to much litigation, and by possibility to the alteration of the rent-charges of the parish, the inaccuracy of whose boundaries may not have been detected until the more recent commutation of its neighbour. These clauses do not seem to extend to such a case.

[a] This clause renders it unnecessary to state in any apportionment the quantities of grain forming the corn rent-charge upon particular estates. All that will in future be necessary under 6 & 7 W. 4. c. 71. § 55, will be to state the gross amount of each quantity of grain, and the gross amount in money, fixed on the whole parish, with the several amounts of the value in money of the rent-charges, fixed on the different properties in the parish at the period of

1 VICT. c. 69.

Particulars of land not necessary to be stated in instruments of voluntary apportionments, if three-fourths of the landowners so request.

5. And be it enacted, that it shall not be necessary to state in any instrument of voluntary apportionment made in consequence of a parochial agreement, whether the several lands are then cultivated as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise, nor to state the amount charged on the several closes of every individual landowner, if three-fourths of the landowners interested in the said apportionment shall by some writing under their hands request the commissioners to direct that such statements be omitted.[a]

When only one landowner, no draft of apportionment nor meeting for objections necessary.

6. And be it enacted, that it shall not be necessary for the commissioners to send a copy of any draft of voluntary apportionment made in consequence of a parochial agreement for the inspection of any parties, nor to hold any meet-

commutation, and calculated according to the prices specified in the 7th section of this Act. The process of ascertaining the yearly payments will therefore be, first to convert the money rent-charge detailed in the apportionment into grain at the prices fixed by § 7, and then to calculate the value of that grain on the prices of the seven years' average next preceding the calculation. (See §§ 57 and 67.)

[a] This clause allows of a variation from the form of a *voluntary* apportionment, by permitting the omission of any statement of the mode in which the lands are cultivated at the time of the commutation. And it also allows of a deviation, not only from the Tithe Commutation Act, but from the preceding Clause (4) of this Act, by permitting the omission of any statement of the amounts charged on the several closes of individual landowners; Clause 4 requiring the amount charged on any "separate portion" of an estate to be so stated. But these omissions are only to be made on the request of three-fourths of the landowners, and by the direction of the commissioners upon such request. And it is to be remarked that if the apportionment be made on the gross estate, and not on the particular closes, the expense of an apportionment on the latter will be incurred on a subsequent sale of any portion of the property. A distinct apportionment on the closes at the first, scarcely, if at all, adds to the general expense. If the apportionment be made by the acre, a sealed map would be required.

ing to hear any objection thereto, when one landowner shall be seized, either in fee-simple or fee-tail, of the whole of the lands that are not glebe lands in such parish.[a]

Prices at which conversion from money into corn is to be made.

7. And be it enacted, That the prices at which the conversion from money into corn is to be made, at the time of the confirmation of each apportionment, according to the provisions of the said Act, are seven shillings and one farthing for a bushel of wheat, three shillings and eleven-pence halfpenny for a bushel of barley, and two shillings and nine-pence for a bushelof oats.[b]

For the assessment and recovery of rates.

8. And be it enacted, that all rates and charges to which any rent-charge payable in lieu of tithes shall be liable may be assessed upon the owner of the rent-charge, and the whole or any part thereof may be recovered from any one or more of the occupiers of the lands out of which such rent-charge shall issue, in case the same shall not be sooner paid by the owner of the rent-charge upon whom the same shall be

[a] This clause dispenses with the provisions of the 61st clause of the Tithe Commutation Act. But no inconvenience can apparently arise from the relaxation, as it is also confined to *voluntary* apportionments, and the parochial agreement on which it is founded will have been subjected by § 27 to such an investigation as to every particular for commuting the gross sum, as the provisions of the Act, and justice to all parties, require. And with reference to the subsequent apportionment, the titheowner will not be interested, inasmuch as the whole of the titheable lands will remain liable to the whole rent-charge, unless any special apportionment shall be required, in which case he will have the protection given by the Act in § 58. It will, perhaps, impose a greater necessity for caution in acting on this clause on the part of the commissioners, as the titheowner will lose the opportunity of objecting to the apportionment given by Clause 61 and here dispensed with.

[b] This clause declares the prices which have been advertised in the Gazette pursuant to 6 & 7 W. 4. § 56, and on which every rent-charge is fixed at the period of commutation.

1 Vict. c. 69.

assessed, in like manner as any poor-rate assessed on such occupier or occupiers in respect of such lands may be recovered, upon giving to such occupier twenty-one days' notice in writing previous to any one of the half-yearly days of payment of the rent-charge, and the collector's receipt for the payment of such rates and charges, or of any part thereof, shall be received in satisfaction of so much of the rent-charge by the owner thereof; but no occupier shall be liable to pay at any one time, in respect of such rates and charges, any greater sum than the rent-charge payable in respect of the lands occupied by him in the same parish shall amount to for the current half year in which such notice shall have been given.[a]

For determining the lands chargeable with rent-charge.

9. And be it enacted, that in all cases where the same person or body politic is not entitled to the perception of the whole of the tithes of any parish, and the liability of the lands to the payment of tithes is not in dispute, but the lands out of which each titheowner is entitled to the perception of his portion or parcel of tithes are not well defined, and also in all cases where such lands lie dispersedly throughout the parish, it shall

[a] By Clauses 6 & 7 W. 4. c. 71. § 70, rates are to be assessed on the *occupier*, who is allowed to deduct the amount from his rent or rent-charge, in accounting with his landlord or the owner of the rent-charge. By this section of the present Act, the assessment may at once be made on the *owner* of the rent-charge, and the whole or any part recovered from any occupier in the parish, to the extent of any rent-charge payable by him. The provision is important to the titheowner, as it will give him a right of voting in parish matters, which he probably could not have enjoyed under the provision for assessing the occupiers. In other respects the provision is guarded against abuse, and will always form a subject of fair arrangement between the parties. Care must, however, be taken that it is not put in force against more occupiers than one in respect of the same rent-charge, nor that more is paid than may be really due.

be lawful, at any time before the confirmation of any apportionment under the provisions of the said Act, for the landowners and titheowners having any interest in such lands or tithes (with the consent of the diocesan and of the patron of the living whenever tithes payable to any spiritual person in right of his benefice are in question), to agree, or for the Tithe Commissioners to determine, in case the commutation shall have been made by their award, that the several rent-charges which shall be made payable in lieu of tithes to each of the titheowners respectively shall be fixed and apportioned upon such particular lands as to them shall seem convenient, so that no lands are charged with more than their due proportion of rent-charge, when the determination shall be by the compulsory award of the Commissioners; and every agreement or determination to that effect, when confirmed by the Tithe Commissioners, shall be binding upon and conclusive against all persons and bodies politic, notwithstanding any doubt as to the identity of the lands out of which the tithes originally issued in lieu whereof such distinct rent-charges are made payable.[a] 1 Vict. c. 69.

10. And be it enacted, that with the first payment of rent-charge under any agreement for the commutation of tithes shall also be paid any sum which shall be agreed to be paid in Provision for the period intervening between the

[a] This provision is calculated to meet many difficulties which will arise when the tithes of a parish are payable to different titheowners, and the identity of the lands, out of which the tithe of each owner issues, cannot be accurately established. Questions of this sort will generally be found to arise at the period of preparing the parochial agreement; and these provisions enable the parties, or the commissioners in cases of compulsory awards, to adjust them, at any time before the confirmation of the apportionment. (See 6 & 7 W 4. c. 71. § 21 and 55; also § 58, of which provision this clause is an extension.)

1 VICT. c. 69.

end of former compositions and the commutation.

consideration of the time (if any) which may intervene between the termination of any previous agreement or composition for the payment of tithe and the time at which, by the said agreement for commutation, the lands shall be discharged from the payment of tithe, regard being had to the whole annual amount of rent-charge agreed to be paid, and to the other circumstances of each case.[a]

Parties to a parochial agreement may fix when it shall begin to operate.

11. And be it enacted, that the parties to a parochial agreement may agree thereby, or by any supplemental agreement made and confirmed in like manner, that the lands included in the said agreement shall be discharged from the payment of tithes (except as excepted in the said Act) from the first day of January next preceding, or from the first day of April, or first day of July, or first day of October preceding or following the confirmation of the apportionment, instead of the first day of January next following the confirmation: Provided always, that in every case the first payment of rent-charge shall be made and recoverable by the means provided in the said Act, on the expiration of six calendar months from the time from which such lands are discharged from the payment of tithes.[b]

[a] See note (a) Cl. xxxiii. of Analysis to 6 & 7 W. 4. c. 71. § 80.

[b] By the 6 & 7 W. 4. c. 71. § 67, the payment of rent-charge can only commence from the 1st January next following the confirmation of the agreement, and the lands are declared to be subject to tithes up to that day. Clauses 10 and 11 enable the parties to date the commencement of the rent-charge from the termination of any previous agreement or composition, or to agree upon any given sum (which is in effect a composition) to be paid for the interval; as also to fix the day (being on the first day of either January, April, July, or October, preceding or following the day of the lands being discharged from tithes) on which the payment of the rent-charge shall begin; and the rent-charge will be payable half-yearly, commencing from the day so

12. And be it enacted, that no deed or declaration authorized by the said Act for the commutation, release, or merger of tithes shall be chargeable with any stamp duty.[a]

Deeds not chargeable with stamp duty.

13. And be it enacted, that any assistant commissioner appointed to assist in carrying the said Act into execution may take the oath required of him by the said Act before any two justices for the county, riding, division, liberty, or jurisdiction wherein such assistant commissioner shall be resident at the time of his appointment, or before a master extraordinary in Her Majesty's high court of Chancery; and every such oath so taken shall be as valid and effectual as if the same had been taken before one of the judges of Her Majesty's court of Queen's Bench or Common Pleas, or one of the barons of the court of Exchequer.[b]

Assistant Commissioner may be sworn before two justices or a master in Chancery.

14. And be it enacted, that this Act shall be taken to be a part of the said Act for the Commutation of Tithes in England and Wales.[c]

This Act to be taken as part of 6 & 7 W. 4. c. 71.

fixed. These provisions give the parties the advantage of suiting their payments according to their convenience, or to the customary periods of payment, which have generally been governed by the periods at which the tithes accrue.

[a] This clause enlarges the operation of § 91 of the Act as to exemptions from stamp duty. Its advantage will be chiefly felt by the holders in fee of small tenements, who can thus commute, release, or merge small payments of tithe or rent-charge comparatively without expense.

[b] This provision will facilitate the swearing in of any assistant commissioner: and by allowing that duty to be discharged by magistrates in the country, will save the expense of journeys to town to be sworn before the judges. It also enables the commissioners to appoint local assistant commissioners.

[c] Clause 14 is of technical importance, as it imparts the full effect of the original Act, and of this Act, to each other. As an instance, it may be noticed that the interpretation clauses of the former Act, are by this clause extended to the latter. (See 6 & 7 Wm. 4. c. 71. § 12, &c.)

ACT

TO FACILITATE THE

MERGER OF TITHES IN LAND.

INTRODUCTION AND ANALYSIS.

The provision at the end of the 71st Clause of the Act for the Commutation of Tithes in England and Wales has been found of considerable value, as it enables parties who have acquired, by purchase or otherwise, the tithes of their lands, to merge the former in the latter, and thus relieve themselves and the titles to their estates from the unnecessary incumbrance of what in truth is a discharged impost where the party claiming it and liable to the payment, is the same. This provision for merger, however, being confined to persons "seised in possession of an estate in fee-simple, or fee-tail," was found not to extend to many cases where, by the intervention of trustees, or particular estates, the unity of the possession and the fee was broken. The present Act was, therefore, passed, to extend the original provision.

Thus power is given for persons who, alone *or together*, may be seised, or have the *power of acquiring or disposing* of the fee-simple of any tithes or rent-

charge by any deed or declaration approved and confirmed by the Commissioners, to convey, *appoint*, or otherwise dispose of the same, so that it may be merged in the freehold and inheritance of the lands out of which it issues, the formalities otherwise requisite to give validity to any instrument for acquiring such fee-simple being dispensed with (1). Deeds or declarations under this Act are exempted from stamp duty (2). The power of merger is also extended to tenants for life where the lands and tithes are settled to the same uses (3); and to copyholds, a doubt having been raised if the original provision extended to property of that tenure (4). The words "person," "lands," and "tithes," are declared to have the same interpretation as is assigned to them by the Tithe Commutation Act (5), and the Act extends only to England and Wales (6), concluding with the usual provision for being altered during the then present session (7). 1 & 2 Vict. c. 64.

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ACT, &c.

1 & 2 VICTORIA, c. 64.

An Act to facilitate the Merger of Tithes in Land.

[4th *August*, 1838.]

WHEREAS by an Act passed in a Session of Parliament of the sixth and seventh years of the reign of his late Majesty King William the Fourth, intituled *An Act for the Commutation of Tithes in England and Wales*, it was (amongst other things) provided that it should be lawful for any person seised in possession of an estate in fee-simple or fee-tail of any tithes, or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the Tithe Commissioners for England and Wales should approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of the same so that the same might be absolutely merged and extinguished in the freehold and inheritance of the lands on which the same should have been charged: And whereas it is expedient that the aforesaid provision should be extended in manner herein-after mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the lords

6 & 7 W. 4, c. 71, s. 71.

1&2 Vict. c. 64.

Persons having solely or jointly Power of acquiring or disposing of Fee of Tithes or Rent-charge may merge them in the Land.

spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act it shall be lawful for any person or persons who shall, either alone or together, be seised of or have the power of acquiring or disposing of the fee-simple in possession of any tithes, or rent-charge in lieu of tithes, by any deed or declaration under his or their hand and seal or hands and seals, to be made in such form as the Tithe Commissioners for England and Wales shall approve, and to be confirmed under their seal, to convey, appoint, or otherwise dispose of the same, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands out of or on which the same shall have been issuing or charged; and every such deed or declaration as aforesaid shall be valid and effectual for the purpose aforesaid, although the same may not be executed or made in the manner or with the formalities or requisites which if this Act had not been passed would have been essential to the validity of any instrument by which such person or persons could have acquired or disposed of the fee-simple in possession of such tithes, or rent-charge in lieu of tithes.[a]

Deeds not chargeable with Duty.

2. And be it enacted, that no deed or declaration authorized by this Act for the merging of tithes shall be chargeable with any stamp duty.

[a] See last proviso to 6&7 W. 4. c. 71. § 71. and Note ([a]), p. 74. It would seem from the provision here made, that the formalities usually observed in executing powers of appointment or deeds of a like nature may be dispensed with, and that provided the right parties execute the declaration, neither recitals, nor indeed any form beyond the mere words of the clause, are necessary. But as the form must be approved by the commissioners, the draft of any such declaration, however simple, should first be sent to them for perusal.

3. And be it enacted, that in all cases where tithes, or rent-charge in lieu of tithes, and the lands out of which the same are payable, are both settled to the same uses, it shall be lawful for any person in possession of an estate for life in both such lands and tithes, or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the said Commissioners shall approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of such tithes or rent-charge, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands out of which such tithes shall have been issuing, or on which such rent-charge shall have been charged.[a] 1&2 Vict. c. 64.

Where Tithes and the Lands charged therewith are settled to same uses, the Tenant for Life may cause them to merge in the Land.

4. And whereas doubts have been entertained whether, according to the true construction of the said Act, any tithes, or rent-charge in lieu of tithe, can be merged in lands of copyhold tenure, and it is expedient that such doubts should be removed; be it therefore declared and enacted, that the provisions in the said Act and this Act contained as to the merger of any tithe, or rent-charge in lieu of tithe, shall be deemed and taken to extend to all lands, being copyhold of inheritance or copyhold for lives, or of any other tenure whatsoever.[b]

Tithes may be merged in Copyhold Lands.

[a] It is to be observed that the provisions of this clause can only be executed where the tithes or rent-charges, and the lands, are both "settled to the same uses." But for this limitation there would seem to be no restriction in an incumbent merging the tithes of his glebe. Indeed it is possible that settlements may have been made or uses declared by an incumbent of his tithes and glebe, but it seems manifest that the provision is not intended to apply to such a case.

[b] The doubts here alluded to seem to have been founded on the peculiarity of the rent-charge being declared by the Tithe Commutation Act, § 71, to be a freehold, although it issued out of a copyhold, and hence that the merger must

1&2 Vict c.64.

Meaning of Words, "Person," "Lands," "Tithes."

5. And be it enacted, that in the construction and for the purposes of this Act, the several words "person," "lands," and "tithes," shall respectively mean and include whomsoever and whatsoever the same words would have meant and included if the enactment herein-before made had been contained in the said recited Act instead of this Act.[a]

Limits of Act.

6. And be it enacted, that this Act shall extend only to England and Wales.

Act may be altered this Session.

7. And be it further enacted, that this Act may be amended, altered, or repealed by any Act or Acts to be passed in this present session of Parliament.

take effect in the lord's estate, and not in that of the copyholder. In either case it might appear to be such an enlargement of the lord's estate, as to amount to a creation of copyhold. Objections have been taken to the exercise of this power, because it manifestly tends to increase arbitrary fines by the difference in value of lands subject to, or discharged from tithes. But this objection applies to any improvement in culture or buildings, and the question is therefore one of calculation, so long as copyhold tenure exists in its present form.

[a] See 6 & 7 W. 4. c. 71. §§ 12 to 16.

REPORT

OF

THE TITHE COMMISSIONERS

FOR

ENGLAND AND WALES,

(In Pursuance of Clauses 38 & 41.)

To the Right Hon. The Lord John Russell,
Secretary of State.

Tithe Commission Office, May 1, 1838.

My Lord,

The Tithe Commissioners are directed by the Act for the Commutation of Tithes in England and Wales to certify and report to one of Her Majesty's Principal Secretaries of State, before the 1st of May, 1838,[a] in what manner certain discretionary powers given to the said Commissioners by that Act ought in their judgment to be exercised, and to lay down such rules as to them seem expedient for the guidance of Assistant Commissioners.

In obedience to that enactment we have the honour to lay the following Report before your Lordship.

Those discretionary powers, on the proper mode of using which we are to report, enable us, while commuting tithes for rent-charges, to increase or diminish the amount of the tithe-owners' receipts or compositions by one-fifth; and further enable us, in certain special cases (each of which is to be separately reported on by us to one of Her Majesty's Principal Secretaries of State), to disregard the past compositions altogether, and to award rent-charges with reference to the average rate which shall be established in respect of lands of

[a] Clause 38.

like description, and similarly situated, in the neighbouring parishes.[a]

By another enactment of the Tithe Commutation Act we are further directed to include in our Report rules for the guidance of the Assistant Commissioners in estimating the value of the tithes of coppice-wood.[b]

Our Report will consist, therefore, of three parts.

The first part will relate to the increase or decrease (to the extent of one-fifth) of the amount of the tithe-owners' receipts when the tithes are commuted for rent-charges.

The second to those cases reserved for special adjudication, in which the past receipts or compositions are to be altogether neglected.

The third part to the mode of estimating the tithe of coppice.

We have thought it expedient to add some remarks as to the proper mode of assessing the expenses incurred in certain processes of the commutation.[c]

On the Increase or Decrease of the Receipts of Tithe-owners when the Tithes are commuted for Rent-charges.

A demand for an increase or decrease of the average compositions for tithe, or the amount of receipts of tithe in kind, may have reference to the compositions generally, or especially to that part of them which, instead of being paid directly to the tithe-owner, has been paid for him as rates or taxes. With the exception of one class of cases, which shall be hereafter pointed out, whenever a party applies to have an addition made to the average compositions of the seven years preceding Christmas 1835, the assistant commissioner we think should, as a preliminary and indispensable step, require the tithe-owner to produce proof that the value of the titheable produce during that seven years exceeded the amount of the compositions, after deducting the expenses of collecting and

[a] Clause 39. [b] Clause 41.

[c] See Clauses 38, 39, 45, 51, and 73 to 78 inclusive.

making due allowance for the inferiority in value produced by the mixture in the tithe-owners' samples, and by the hazard and damage incident to his mode of collecting and housing his produce. When such proof has been adduced, the tithe-payer may support the reasonableness of the composition; first, by showing any facts which make it probable that, if the tithe had been taken in kind, or if a higher rate of composition had been demanded, the average titheable produce would have been less than it was, to an extent which made the actual compositions a reasonable equivalent for the rights of the tithe-owner; or, secondly, by proving any facts which make it probable that the amount of titheable produce raised during the seven years, which are to govern the average, was only a temporary, and was not likely to be a permanent production.

We are somewhat reluctant to attempt any enumeration of the facts, or classes of facts, which might e produced in proof of either of these propositions, because we do not wish to narrow the discretion of the Assistant Commissioners, who, when on the spot, will be the best judges of the nature of the evidence calculated to throw light on each particular case.

In order, however, to make our own views more intelligible, we will point out some of the facts which, it may be assumed, will be the most commonly relied on, without meaning to exclude others which may at any time appear to the assistants to bear upon the cases immediately before them. Proof may be received, we think, on the part of the tithe-payer, that the collection of tithes in kind would have been more than ordinarily troublesome and expensive; that difficulties as to roads and markets would have reduced the value of the titheable produce when collected more than usual; that unusual and expensive crops have been grown on the faith of continued compositions; that an unusually expensive system of tilling and manuring has been adopted on the faith of continued

compositions; or that peculiar facilities exist for changing the culture from arable to grass. If one or more of these, or any analogous circumstances, satisfy the assistant commissioner that the compositions, though not representing the full value of the titheable produce, were still a fair equivalent for the rights of the tithe-owner, he should refuse to increase the rent-charge. If, after making full allowance for all such circumstances, he thinks the average compositions fell below a fair equivalent for the rights of the tithe-owner, he should increase the rent-charge, by adding to the average compositions either a whole fifth of their amount, or such a proportion of that sum as appears to him reasonable.

When a tithe-payer applies to have the average of the compositions, or the amount of receipts of tithe in kind diminished before a rent-charge is declared, it will be for him to show, either, first, that the compositions have actually exceeded the real net value of the titheable produce during the seven years; or, secondly, that there is valid ground for believing that the cultivation and produce would not have continued to be what it was during the seven years preceding Christmas 1835, if the full rate of past compositions had continued to be exacted.

The assistant commissioner may receive in evidence any facts which tend to establish either of these propositions. Two are obvious. Land may have been laid down to grass during the seven years preceding Christmas 1835, or, indeed, at any time before the passing of the Tithe Act under circumstances which make it probable that it will continue in grass; or, the cultivation, the produce, and the compositions may have been gradually and continuously declining during the seven years preceding 1835, and the decrease may be likely to be permanent. If these or any analogous circumstances satisfy the assistant commissioner that the average compositions or net receipts of tithe in kind of the seven years preceding Christmas 1835

would form a rent-charge which would be more than an equivalent for the rights of the tithe-owner, he will diminish the rent-charge either by a whole fifth of the average amount of the compositions or receipts, or by such a proportion of that sum as appears to him reasonable. If he is not so satisfied he will refuse to diminish the rent-charge.

Where tithe has been taken in kind continuously, and for a considerable period, it may be assumed that the cultivation of the land has been accommodated to that state of things. In such cases the Assistant Commissioner will only have to make proper allowances for the expenses of collection, and for the inferior value (as compared with other produce) of tithe produce collected and housed by the tithe-owner. But when tithe has been taken in kind unexpectedly, discontinuously, and for a portion only of the seven years preceding Christmas 1835, then the titheable produce may have been greater, because the actual cultivation had been adopted on the faith of a continued composition. In such a case, we are of opinion that the average should be amended and lowered, by substituting for the receipts of these years the succeeding compositions, or, if there have been no succeeding compositions, then such a composition as may appear to the assistant would have been reasonable under the circumstances. It must be understood, however, that this substitution is not to be carried so far as to reduce the rent-charge by more than one-fifth of the average receipts, for that would be exceeding our powers. Subject to this limitation the average obtained by such a substitution should still be open to objection as too high or too low to be perpetuated.

We have already intimated that there is one class of cases in which the tithe-owner, making an application for an increase, should not be obliged, as a preliminary step, to prove that the actual net value of the titheable produce during the seven years preceding Christmas 1835, exceeded the amount of the compo-

sitions. In making this exception from the general rule, we had in view certain cases in which the accounts of the seven years may show a progressively-increasing amount of titheable produce, arising from the spread of tillage, from improved though not unusually expensive farming, from the restoration of lands to a productive state, which litigation and doubtful ownership or the misfortunes of the occupiers had caused to be temporarily neglected or abandoned, or from analogous causes. In some such cases the assistant commissioner may have a decided conviction that the increased production will be permanent, and is not dependent on the continuance of the average rate of past compositions or receipts. In such cases we are of opinion that grounds would be laid for an addition to the rent-charge to the extent of one-fifth of the compositions or receipts for tithe in kind, or some portion of that sum; as, in the corresponding case of a progressive decrease of titheable produce from the decreasing breadth of arable land, or from other causes, we have already stated that grounds would be laid for a reduction of the average of the compositions or amount of receipts, whenever the assistant is satisfied that the decrease in the produce is likely to be permanent.

We have pointed at the facts, or rather classes of facts, best calculated to guide the decisions of the Assistants when they are called on to increase or diminish the average compositions; and in many cases direct evidence of such facts may be adduced sufficient to satisfy their minds; but this will not be the case in all. In many instances it may be impossible to obtain direct and satisfactory evidence as to the alterations which would have taken place in the efficiency or the modes of cultivation if a higher rate of composition had been demanded, or if tithes had been taken in kind. The Assistants will diligently obtain all the local information possible, and carefully weigh all such evidence as may be adduced by either party, and still considerable doubts may remain on their minds as to

what effects a more rigorous exaction of tithe would have had on the produce. In all such cases of doubt, it appears to us clear that the rates of composition which they find prevailing in neighbouring parishes similar in quality and position ought to have considerable weight in determining their decisions. Circumstances which it may be impossible to detect in an examination of a few days have in many cases influenced in the long run the rates of composition in large districts, and accommodated those rates to the inferior state of cultivation which would gradually have followed any attempt on the part of the tithe-owner to have exacted his full legal rights. In districts in which numerous cases of voluntary commutation have already occurred, the rent-charges established by the parties themselves will of course afford a yet safer standard of comparison when the assistant is called on to decide cases which the direct evidence adduced has left doubtful.

Circumstances connected with the payment of parochial rates may occasionally form a special ground for applications to increase or diminish the sum formed by the joint amount of compositions and rates. We understand the main object of the Tithe Commutation Act to be to perpetuate in the form of rent-charges the sums which the parties themselves have treated tithes as worth during the seven years preceding Christmas 1835, with the exception of certain special cases, and subject to a variation in all to the extent of one-fifth of the whole of such sums. While doing this, it is also the purpose of the Act to put upon exactly the same footing the tithe-owners who have paid their own parochial rates and the tithe-owners whose rates have been paid for them by the tithe-payers. If therefore in two parishes, in both of which the tithes have been treated as worth 600*l.*, the tithe-owner in one has received 600*l.* and paid his own rates, and in the other the tithe-owner has received 400*l.*, and 200*l.* have been paid for him as rates, that 200*l.* must be added to the 400*l.* to make up the tithe-

owner's real average, and put him on a footing with his neighbour.

There are cases, however, in which the tithe-payers, having contracted to pay rates for the tithe-owner, have proceeded to assess the tithes at a much smaller sum than they would have been assessed at had the rates been paid by the tithe-owner himself. This fact, of course, can only be established by showing the principle on which tithes had customarily been assessed in that immediate neighbourhood; and that being shown, a ground may be laid for adding something to the joint amount of rates and compositions, not strictly perhaps under the 20 per cent. clause, but because in all such cases the joint amount of the compositions, and of the rates which are shown to have been paid on the actual assessments, do not represent either the sums agreed to be paid by the tithe-payers, or the sums really paid by them, when the greater amount of rates necessarily levied on their own farms, in consequence of the low assessment of the tithe, is taken into account. On the other hand, there are cases where the sums paid by the tithe-payers as rates on their tithe, represent larger sums than those which were in the contemplation of either party at the time the agreement between them was made; and form, with the compositions, therefore, a larger sum than either party can be said to have treated the tithes as worth. These are cases in which unusual and therefore unexpected circumstances have swelled the rates in particular years beyond the amount of the expenditure of the parish for ordinary objects, and beyond the amount, therefore, which either party reckoned on at the time their contract was made.

The rules which we have here established appear to us such as, when fairly and steadily applied to individual cases, will do justice to both parties. Our conviction is, that while doing such justice they will carry on the compulsory commutation very much in the spirit and with the results that have hitherto characterised the voluntary commutation. It appears from

the Returns made to Parliament that the rent-charges fixed by voluntary agreement in the different counties have oscillated within moderate limits on each side of the past compositions; and we believe that the rules which we now submit for the guidance of the Assistant Commissioners will have the effect of making the rent-charges established by compulsory awards oscillate in a similar manner.

Special Cases.

Special Cases are cases reserved by the 38th Clause of the Act for a separate adjudication. In these cases the past dealings of the parties are to be wholly neglected, and the rent-charges decreed are to be determined by the rent-charges established in lands of the like description, and similarly situated, in the neighbouring parishes. Such cases will probably be very much confined to the three classes enumerated in the Commutation Act; namely, cases of direct fraud and collusion; cases in which a great length of time has elapsed since the making a composition which remained in force during the seven years preceding Christmas 1835; and cases in which the parties have stood in some peculiar relation to each other, by which the free agency of one of them was restrained, or in consequence of which the composition nominally made for tithes was only part of a bargain including other property demised, and affords no evidence of the separate value of the tithes. But as we are in every case to report to the Secretary of State the grounds upon which we have reserved a parish for such separate adjudication, and as we are confined to the establishment of rent-charges limited by the rate of those fixed on similar lands in the neighbouring districts, we think the rule as to those cases may, without any danger, and with some advantage, be put in a more general form; and that every case should be declared to be a special case, in which it appears that, from some peculiar circumstances, the past compositions afford no evidence of what the parties themselves considered the tithe-

owners' rights as worth during the seven years preceding Christmas 1835.[a]

Coppice.

The difficulty of fixing rent-charges in lieu of the tithe of coppice-wood arises mainly from the fact, that from different coppices being at the present moment in different stages of growth, there would be injustice in fixing the same annual payment on coppice-lands of equal quality, if that payment were to commence at once on all.

To avoid this, a certain sum might be paid down as an equivalent for the value of the tithe of the actual growth of the wood, which would vary according to its age, and then a uniform rent-charge might be fixed on lands of like quality; but this would in some cases be extremely inconvenient and objectionable to the tithe-payers.

It appears to us preferable that the tithe actually accrued should be considered as so much capital belonging to the tithe-owner, and that the tithe-payer should be charged only with interest on it at four per cent. in addition to the tithe he would pay in future, supposing the coppice to have been just cut.

This plan, besides being more convenient to the land-owners, has the additional recommendation of securing a somewhat larger permanent payment to the tithe-owners than they would hereafter receive, if all the tithe due for the growing wood were paid down at once.

For the details of this plan, and some calculations as to its results, we refer your Lordship to the paper marked "A" appended to this Report.

[a] A still further case for special adjudication may arise from a change of circumstances not within the control of either party. Thus the 1 and 2 Vict. c. 113. § 16. reduces the duty on imported apples, pears, and fruit, to an ad valorem of £5 per cent., which, from the perishable nature of these articles, almost precluding a seizure for too low an estimate of value, practically amounts to their being admitted duty free. Hence this kind of produce of market gardens may be so reduced in value as not to bear the high tithe paid for the 7 years ending Christmas 1835. It would seem that this is a fit subject for a special case, although it is probable the Commissioners would not deal with such a case till a late period, so as to allow the *true* operation of the recent Act to be first ascertained.

These rules as to coppices will in most cases we think satisfy justice and the wishes of the parties, but in some few instances, such as those of very aged tithe-owners or of tithe-payers who are tenants for life, they may produce discontent and hardship. We are of opinion, therefore, that it will be expedient to reserve to this Commission the power, on a special report from an Assistant Commissioner, to direct any particular case of the tithe of coppice-wood to be arranged in such a manner as may seem to them best suited to the peculiarities of that case.

Expenses.

Among the important duties of the assistant commissioners will be that of assessing the expenses of awards in cases where applications are made for an increase or diminution of the averages, or where an appeal is made against the decision of the Assistant Commissioner, on the ground that he has not correctly calculated those averages. It does not appear to us to be expedient, or even clearly legal, to take wholly away from the Assistants the power given them by the 73d section of the Act, to assess costs between parties in such proportions as in each case they shall think fit and reasonable; but for their guidance in the exercise of that power, we declare it to be our opinion that, when notice of such an application to vary the average is given under the 38th clause of the Commutation Act, or when parties appeal against the award, to save the expense of unnecessary preparation on the part of the opposite party, the parties applying or appealing should set forth in a written notice the grounds of their application or appeal, and that the applicant or appellant should not afterwards be allowed to enlarge or change those grounds.

On the hearing, we think each party should support his own case by such evidence as he may think it expedient to produce, and that the Assistant Commissioner shall, if he see fit, decide on such evidence alone, leaving him always the power of directing valuations

and admeasurements if, in order to resolve his doubts, he finds it necessary to do so.

The expenses incurred by the parties themselves should, as a general rule, be paid by them respectively.

The expenses incurred by the directions of the Assistant Commissioner he will assess, as the justice of the case may seem to him to require.

But if cases arise in which either the application or the resistance to it appears to be obviously frivolous and vexatious, he should state that fact to us, and the grounds of his decision, and charge all the expenses of both parties, and all the expenses incurred by his direction, on the party making such frivolous or vexatious application or opposition.

And although, as a general rule, the expenses incurred by the parties should be defrayed by themselves, yet, when they are clearly driven to such expenses by the perverseness of their opponents, and by refusals to admit facts which the Assistant thinks ought not to have been contested, then we think the Assistant may properly assess on the party whose perverseness and litigious refusals have led to unnecessary expenses, the whole of such expenses, although incurred in the first instance by his adversary, and that even in cases as to which he is not prepared to report the whole contest as frivolous and vexatious.

A portion of the expenses incurred by the parties themselves, or by order of the Assistant, may be for the purpose of obtaining information which will lessen the expenses of the apportionment: we are of opinion that in all such cases the Assistant should be directed to levy such expenses as expenses incident to the apportionment; and, when such expenses have been incurred by the parties themselves, he should order the repayment to them of such sums as he has so levid.

We have the honour to be,
Your Lordship's most obedient and faithful servants,

W. BLAMIRE,
T. W. BULLER,
R. JONES.

APPENDIX

TO THE FOREGOING REPORT.

A.—Proposed Rules for fixing the Rent-charge upon Coppice at different periods of growth.

WHERE coppice has just been cut, the rent-charge will be the annual sum which, accumulating at compound interest, would amount to the value of the tithe at the average period of cutting.

At any intermediate point of time from one average period of cutting to another, the rent-charge will be the above annual sum, increased by the interest of the value of the tithe which has accrued.

The value of the tithe which has accrued at any intermediate time between the usual periods of cutting will be the amount of the annual sum first mentioned, at compound interest, during the number of years' growth of the coppice.

The principle upon which the above Rules are founded is, to add the interest of the tithe which has grown to the annual value of the growing tithe.—(Interest to be calculated at 4 per cent.)

Ex. 1.

Required the rent-charge for 30 acres of coppice, as follows,—viz.:

A.	10 acres	just cut.
B.	10 acres	10 years' growth.
C.	10 acres	20 years' growth.

The average period of cutting being 30 years, and the value of the tithe, when cut, 3*l.* per acre.

	s.	*d.*	£	*s.*	*d.*
A.—Annual sum which, at compound interest, will produce 30*l.* in 30 years . .			0	10	8¼
B.—Annual sum, as above	10	8¼			
Increased by the interest of 6.415, the amount of 10*s.* 8¼*d.* yearly, at compound interest, for 10 years . .	5	1½			
			0	15	9¾
C.—Annual sum, as above	10	8¼			
Increased by the interest of 15.912, the amount of 10*s.* 8¼*d.* yearly, at compound interest, for 20 years . .	12	8¾			
			1	3	5
			£2	9	11

£2. 9*s.* 11*d.* rent-charge required.

[Ex. 2.

Ex. 2.

Required the rent-charge for 30 acres of coppice, as follows,—viz.:

A. 10 acres . . . . . just cut.
B. 10 acres . . . . . 15 years' growth.
C. 10 acres . . . . . 30 years' growth.

The average period of cutting being 30 years, and the value of the tithe, when cut, 3*l.* per acre.

	£	s.	d.	£	s.	d.
A.—Annual sum which, at compound interest, will produce 30*l.* in 30 years .				0	10	8¼
B.—Annual sum, as above . . .	0	10	8¼			
Increased by the interest of 10.697, the amount of 10*s.* 8¼*d* yearly, at compound interest, for 15 years .	0	8	6½			
				0	19	2¾
C.—Annual sum, as above . . .	0	10	8¼			
Increased by the interest of 30*l.* .	1	4	0			
				1	14	8¼
				£3	4	7¼

£3. 4*s.* 7¼*d.* rent-charge required.

NOTE ON COMPULSORY COMMUTATIONS.

It will be seen by the note to Clause 36, that the Commissioners have, in a circular of the 27th of August, 1838, announced their intention of exercising the compulsory powers of the Act, in the first instance only in the four following cases, namely, 1st. When litigation is in progress. 2d. When tithes are taken in kind. 3d. On the joint request of tithe-owner and land-owner. 4th. On changes of incumbency. And their reason for thus limiting the exercise of these powers is stated to be the great and rapid progress made in voluntary commutations.

To the above, the Report of the 1st of May 1838 on the cases reserved for special adjudication, including the power to increase or diminish the averages for the seven years ending 1835, the special cases, coppice, and expenses, applies; and the provisions in Clauses 40 and 42 for fixing the rent-charge, and for meeting cases of change of culture in the case of hops, fruit, and garden produce, for determining how the exemptions specified in Clause 43 are to be dealt with, and for moduses and appeals, interspersed throughout the Act, must also be considered as depending on these compulsory powers.

By a return made up at the Commission to the 1st of October 1838, it appears that the following was the progress then made in voluntary commutations in various parishes and districts or townships throughout England and Wales, viz.:

Notices of Meetings.	Agreements.		Apportionments.	
	Received.	Confirmed.	Received.	Confirmed.
7810	2483	1528	450	105

From this table it may be assumed that there is a very large proportion of the meetings of which notices have been given, where no agreement has been effected; and of the agreements nearly 1000 were on the 1st of October under consideration; whilst of those confirmed, but 450 had proceeded so far as the apportionment, and of these latter less than one-third had been completed. It is probable that, taking into account the fact that there are more than 14,000 places in England and Wales maintaining their own poor, and which will therefore, under the provisions of Clause 12 of the Tithe Commutation Act, be separate parishes for the purpose of the commutation, in addition to the power given to the Commissioners by the same clause to declare separate districts for the like purpose, the ultimate number of commutations will exceed that number; it becomes, therefore, a matter of considerable interest and importance to the country at large, to consider how the powers thus vested in the Commissioners, and now fully in force, can best be made available for attaining just principles of commutation.

The tenor of the 6 and 7 W. 4. c. 71, and the subsequent acts for its amendment, the circulars and reports issued by the Commissioners, and the large number of notices of voluntary meetings already given, show the prevalence of a desire to effect commutations by the voluntary process. And of the number of places where no notice of meeting has been given, it may be assumed as a further evidence of this desire, that many have taken no step because tithe-owner and land-owner have been alike satisfied with their present arrangements. With reference to both these classes, and indeed to every place in the kingdom, it may be further assumed that the voluntary commutation is impeded only by one or two points of doubt or litigation. The first suggestion therefore which occurs, is, that in every place where no agreement has yet been made, or where the confirmation is withheld from any legitimate impediment to the wishes of the parties being carried into effect, they should agree on referring the disputed or doubtful point to the Commissioners, and settle every other point among

themselves; that is, as a subject for an award, rather than for arbitration. This suggestion may at first appear very simple and unimportant, but it is most frequently found in practice that when parties meet, their disagreements and not their agreements are the first, if not the chief and only topics of consideration and debate; and when it is so, there is little hope of a voluntary commutation. To obviate this, it would be desirable that the persons giving the notice, and who are therefore to be considered the promoters of the commutation, should at their first meeting so arrange their proceedings as to see *first*, the points and details on which they agree, *secondly*, those on which they disagree; and if the latter do not admit of immediate adjustment, then it should be their care, by appointments of committees or deputations, or by other arrangements for communication with the Commissioners, to put these points of disagreement in train for a settlement through their means and powers, and, by adjournments of the meeting, and intermediate negotiations, to bring the disputed points to an issue and decision. Such a course followed out in a fair spirit of peace and conciliation, will go far to settle nine-tenths of the disputed cases in the kingdom, and will fall in with the views of the Commissioners (Nos. 1 and 3, Report 1st of May, 1838,) regarding cases in litigation, and those where both land-owners and tithe-owners desire their interference.

As to the cases Nos. 2 and 4, where tithes are taken in kind, or there is a change of incumbency, it would seem sufficient for any land-owner or tithe-owner to call the attention of the Commissioners to the fact, and they would, according to the views of their report, put their powers in motion, and take early steps for a compulsory award. But even in these cases their views might be anticipated and aided by the more satisfactory course of the parties calling a voluntary meeting having previously requested the presence of an Assistant Commissioner to preside and guide them in their proceedings, and abiding by his decision in every point; but if this cannot be done, reserving and confining their dissent and right of appeal to as narrow a point as possible.

The main struggle in disputed or doubtful cases between land-owner and tithe-owner, will be the chance which either party may imagine he has to the increase or decrease of 20*l.* per cent., or to a special case. It is but the natural course of events that each party should strive to make the best of his case; but in their attempts to do this, now that the Commissioners are at hand with ample powers to do justice and equity between both, they should see the prudence of endeavouring, by mutual concession and accommodation, to relieve the Commissioners from such a duty. Even if the compulsory process be less expensive than the voluntary, it is probable that the result of the former will fail in being satisfactory to both parties. Their first point therefore should be to dispense with the interference of the Commissioners altogether —their next, to reduce it within its narrowest limits.

As a general rule for the guidance of both parties, the direct scope of the Act is to be considered, viz., to relieve the land-owners from any addition to their liability to the tithes which they have paid on an average of the seven years ending Christmas 1835, and to give the tithe-owner the true value of his tithes according to that average. Where that average cannot be ascertained, the case is to be specially dealt with by the Commissioners. Where there are reasons for supposing it will not fairly represent the sum to be taken as a fair basis for the commutation, the Commissioners may also deal with it specially, according to the provisions of the Act, as expounded by their report of the 1st of May, 1838; and in most of these special cases it will be found that regard is to be had to the average rate of rent-charges of land of the like description, and similarly situated, in the neighbouring parishes.

But it must not be supposed, that the mere fact of the average for the seven years being above or below the fair value of the tithes, will of itself constitute a claim for a special case. The 37th clause literally confines the Commissioners to the seven years' average, ending at Christmas 1835, where it can be ascertained; and the exceptions of that and the 38th, or any other clause, are to be *bonâ fide* dealt with as exceptions, and not as rules. The recollection that the rule is, as it ought to be, more stringent than the exception, should in common prudence lead parties to prefer the voluntary process, where mutual concession can be exercised, and the letter of the Act, which binds the Commissioners, mitigated by the conciliatory feelings of parties doubting on which side their decision will be given.

In all cases, therefore, where either party raises or disputes a claim, departing from the ascertained or supposed value of the tithes for the seven years ending Christmas 1835, the points above noticed should be well weighed and considered, and brought, if at all, in their most abstract and reduced state before the Commissioners. Cases of disputed claims for moduses or other exemptions, are perhaps the most difficult to deal with in so conciliatory a point of view; and the tithes actually in litigation, the suits respecting which are referred by Clauses 45 and 46 to the Commissioners, will probably in almost every case require their early intervention and adjudication.

For this purpose the 45th clause empowers them to appoint a time and place in or near the parish where the dispute exists, for its hearing and determination; and their decision is final, subject by Clause 46, when the annual value is above 20*l.*, to an appeal at common law, with power for the judge to direct the jury to find a verdict subject to the opinion of the Court on a special case; or if the question at issue be one of law only, and the parties agree on the facts, the Commissioners may, on the request of any person dissatisfied with their decision, direct a case to be at once referred to a court of law without the intervention of an action and verdict.

As all these proceedings must be disposed of before the completion of a voluntary agreement, or compulsory award, it is important that interested parties should, with as little loss of time as possible, put their cases in train for early adjustment. At present no directions have been issued by the Commissioners upon this point; the following suggestions may however be serviceable.[a]

In cases not in litigation, the party seeking the decision of the Commissioners, should, by himself, or his advisers or agents, state his case in writing in the most brief and succinct form—setting forth the particulars and amount of the charge or exemption claimed, and the quantities of the lands sought to be charged, or exempted, with the grounds on which the charges or exemptions are based, and the kind of evidence ready to be offered to the notice of the Commissioners, and request of them that a day and place may be fixed for the hearing. When fixed, the case should be followed up, and the evidence got up for hearing, as in a trial before the sheriff or his deputy, and if necessary the Commissioner or Assistant Commissioner who is to attend should be applied to for summonses for the attendance of witnesses or production of papers; and when in attendance the Commissioner or Assistant Commissioner will sit as judge, and after hearing both sides report his decision to the Commissioners, who will of course apprize both parties in such form as they may see fit. This decision, if unappealed against when the power of appeal is reserved, will be binding on all parties, and the commutation be based on it accordingly.

In litigated cases the same process may be adopted, although parties must be careful to consult their legal advisers as to the proper mode of staying proceedings in the Court when the suit is pending. It would seem but safe, after the Commissioners have determined to take the case into their hands, to apply to the Court by petition or motion, upon an affidavit of the fact of their intervention, for an order staying proceedings *ad interim*;[b] and under any

[a] But see note on "forms," p. 136, *et seq.*

[b] As the power given to the Commissioners to settle the cases in litigation is not imperative but permissive, it might be a great relief to the suitors generally in the courts of Chancery and Exchequer, if the heads of those courts were to require from the proper officers a return of the tithe cases now pending, and either by an order in each case, or by a general order, to refer every case to the Commissioners, or enable any party to such suits to call on the opposite parties to show cause why the points in dispute should not at once be referred to them. In calling for such a return, it will be necessary to learn when the last step in any cause was taken; and where the usual time for taking a stage in the suit is passed, the Court could name a day to speed the cause, or deal with it as abandoned, unless the parties refer it at once to the Commissioners, or shew cause against such a reference. Probably, if such a course be taken and followed up, it would be found

circumstances the desirable course would be for each litigant party to prepare his case, with an appendix of the evidence in its support from the documents and facts before the Court, as in the ordinary case of appeals to the Privy Council or House of Lords, or even of special cases reserved for the consideration of the courts of law, or appeals from one jurisdiction to another. Such a course will enable the Commissioners to consider each case separately, and refer to either party for explanation or amendment, and when the case is finally settled, and at issue, direct the parties to exchange cases, and then to proceed to an adjudication, or take such further steps as may be necessary for arriving at a final decision.

It is impossible where no rules of procedure are given by statute, or by the authorities empowered to put the statute in force, to do more than suggest or conjecture the course most expedient to be pursued. Much, indeed, depends on the spirit in which the question is brought forward. If the litigant parties can but persuade themselves of the propriety of placing even their causes of disagreement in a fair way for cheap and early decision, the powers of this Act can be most beneficially used for the purpose. The very nature of the *quasi* court, which the Commissioners or Assistant Commissioner will hold, allows of this; for it will evidently be so divested of the formal and technical arrangements, which now stand between the suitor and the judge, that the whole case will assume the aspect of a friendly though authoritative mediation, and admit in many cases of the absence both of counsel and attorney, or any other kind of agent. Such was evidently the intention of the legislature in giving the power to remove suits from the law and equity tribunals of the country: not that these are not the best and purest fountains from which the stream of justice and equity can flow, but because most of the cases relating to the property dealt with by these Acts, depend rather on local and familiar custom, than on the exposition of any high or profound legal principle. Doubtless the legal application of the law relating to tithes, or the bearings of the facts and evidence of a case upon any legal points, are matters which cannot often be safely dealt with without the intervention of agents duly qualified; but it is to be presumed that the Commissioners or Assistant Commissioners, to whom these cases are intrusted, will in most instances be themselves well acquainted with the law applicable to the subject, or, in any case, endowed with sufficient judgment and discrimination to decide on the facts, even if it be necessary to reserve the points of law for a legal tribunal. But it must not be forgotten that a discretion as to the payment of the costs of all these cases rests with the Commissioners or Assistant Com-

that there are less than one hundred cases really in suit throughout England and Wales, in both the Courts of Chancery and Exchequer, added together.

missioner, or with the court where any action shall be tried, or to which any case shall be referred. (See Clause 73, and Report of Commissioners, *ante*, p. 127.)[a]

FORMS.

ALTHOUGH it has been thought desirable, for the reasons mentioned in the notice prefixed to this edition (p. vi.) to omit the forms and directions framed and circulated by the Commissioners, yet the instructions pointing out the course of proceeding in making awards, and the Secretary's letter which accompanies them, so clearly point out the steps which parties are required to follow in such cases, that much useful and authentic information would be lost if they were not given; and they are accordingly subjoined, with a list of such forms and papers as any interested party may obtain on application from the Commissioners.

The 37th clause requires the Commissioners to give notice of their intention to make a compulsory award. The course they have proposed to follow, is to send to the officiating minister and parish officers copies of this notice, which names the day for the first meeting, at which an Assistant Commissioner will attend for the purpose of proceeding; and directions are at the same time sent for fixing up the notices, and calling a vestry to consider the instructions which accompany the notice, with a form of certificate of its having been duly affixed.

When there is any difficulty, either known or apprehended, it would be desirable, and indeed necessary, to state it to the Commissioners previous to the meeting, in order to obtain from them such forms as may seem most suited to the case. One of the most useful is the printed form of award, which is framed with clauses capable of being applied and adapted to every case, according to its peculiar exigencies.

Thus—1. The main clauses of the award are adapted to common cases. (Cl. 36, 37, 50.)

2. Provision is made for cases where the great tithes are impropriate, and the small tithes belong to the vicar.

3. When the tithes belong to an appropriator and are under lease, with various provisions suitable to the cases of a bishop or ecclesiastical corporation being appropriator, or where the impropriation belongs to a lay person or corporation.

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[a] It does not, however, appear that these provisions extend to the costs of pending suits, incurred previous to the Commissioners taking them up. This shows the propriety of an application to the Court, which might order a reference to the Commissioners, reserving the costs as for further directions; or the parties might agree that they should abide the event of the reference.

4. Where laymen are impropriators of some of the tithes, and the incumbent of another parish is a portioner of other parts of the tithes in the same parish.

5. Where some lands are absolutely and others partially exempt from tithes (44).

6. Where some of the lands are covered by moduses, or prescriptive payments, or where there are peculiar modes of tithing (44).

7. Where lands are exempt only when under peculiar modes of cultivation (44).

8. Where lands are exempt when in the occupation of owners, (Cl. 43).

9. Where some of the lands are cultivated, as hop grounds or market gardens, and are to have an extraordinary rent-charge fixed on them, (Cl. 40, 42).

10. When any of the tithes have been merged. (Cl. 71, and 1 & 2 Vict. c. 64.)

11. When some of the lands are coppices, (Cl. 41).

12. When any lands previously barren, in the *legal* sense of the term, have been brought into cultivation during the seven years ending Christmas 1835, (Cl. 43).

13. Where notice has been given that the average to be ascertained under Cl. 37 will not fairly represent the sum which ought to be the basis for fixing a permanent commutation, (Cl. 38.)

These details would seem to include every case, or afford an easy precedent for adaptation to one to which they do not exactly apply. And the following notice, which refers to the Report of the 1st May 1838, will be of importance to parties seeking to avail themselves of the provisions for special cases :—

"In exercising or declining to exercise the power of diminishing or increasing the averages by one-fifth, the Assistant Commissioners will be guided by the rules laid down by the Commissioners and approved by the Secretary of State for the Home Department. Awards in cases where the 20 per cent. clause would not do adequate justice, but which are reserved for separate adjudication, must be made by the Commissioners; but an Assistant Commissioner, if specially appointed for that purpose, may hear and determine objections to such an award."

It will be found that the subjoined instructions and letter require the parties to produce such evidence as they may think suited to their respective cases. A slight attention to the particulars above enumerated as forming the subject of special detail in the award, and the common rule which assumes that every man knows his own case best, will doubtless enable any interested party to decide for himself on the best mode of bringing out his case, and supporting it to the best advantage before the Commissioners. And the very great facility for unreserved communication which the Commissioners afford to all parties, offers an ample guarantee that this Act will ultimately prove "the healing measure" which its authors professed and intended it should be, when it was submitted by them to the Legislature.

TITHE COMMUTATION.

GENTLEMEN,

An assistant commissioner having been directed to hold a public meeting at
at o'clock on the
day of for the purpose of awarding the sum to be paid as rent-charge in lieu of the tithes of the said , it is requested that all persons entitled to take part in the proceedings will attend in person, or appoint under their hands an agent to attend in their behalf, and be prepared with such documents and evidence as they may think necessary.

It is especially requested that tenants and occupiers of lands will give early notice to non-resident landowners.

If there be any disputes as to boundaries, or differences as to moduses, or exemption or claims, whereby the award is likely to be hindered, it is requested that the parties will send early notice to the Commissioners, stating the nature of the claim or dispute. Landowners or titheowners intending to appeal for an increase or decrease to the extent of 20 per cent. under the 38th section of the Tithe Act, must give notice of their intention to the Commissioners, within one calendar month; and in giving such notice, they are requested to state the grounds of appeal, the nature of the evidence which they intend to produce, and the witnesses they propose to call.

It is requested that the landowners interested in the commutation will nominate a chairman or some other person to be the organ of communication between them and the Board, and that they will immediately communicate the name and address of such person to the Board.

Parish officers will be required to attend at the meeting held by the Assistant Commissioner, and produce their accounts of all rates and taxes paid, either directly or indirectly, in respect of the tithes of the district under commutation, during the seven years previous to Christmas 1835.

I am, Gentlemen,
Your obedient Servant,
J. E. HOVENDEN,
SECRETARY.

To the Owners and Occupiers of Land
of the Parish of

TITHE COMMUTATION.

COURSE OF PROCEEDING IN MAKING AWARDS.

The Assistant Commissioner will proceed to ascertain,—

1. Who are the owners of the tithes, and in what right.
2. Who are the owners of the lands subject to tithes, the estimated quantities of such lands, and state of cultivation.

3. What moduses there are, and what lands are covered thereby, and the estimated quantities of such lands, and state of cultivation; and what lands are exempt from any, and what description of, tithes, and the estimated quantities of such lands.

4. He will then proceed to ascertain the average composition or receipts for tithe during the seven years previous to Christmas 1835, by calling on the titheowners to produce their accounts for that period.

5. The landowners will then have an opportunity of questioning these accounts, or producing evidence in proof of error. In case the titheowners fail to produce accounts, the landowners will be called upon to supply the deficiency.

If the rates and taxes have been paid for the titheowner, the average amount of such rates will be calculated from the rate-book, and the overseer's accounts for the seven years will be required.

If the tithes have been taken in kind, the assistant-commissioner will call,—

1st, On the titheowners to produce their accounts of the gross receipts during the seven years, with their estimate of the expenses of collection.

2d, The landowners may then question the accuracy of these accounts, or in the absence of such accounts may produce others of their own, and evidence as to the cost of collection and net value of the tithe.

If no accounts of compositions or value of tithe taken in kind can be obtained from either party, the assistant-commissioner will at once report to the Board that the case must be specially dealt with.

In cases of an appeal for increase or decrease to the extent of 20 per cent.,—

The titheowner may produce his accounts of average receipts.

The landowners may then question the accuracy of his accounts, or in the absence of such accounts may produce others of their own.

The appellant may then show cause of appeal, and produce his evidence in support. For the points on which such evidence should bear, the parties are referred to the Report made to the Secretary of State for the Home Department on the 1st May 1838,* which Report has since been sanctioned by the Legislature.

The respondent may answer and produce counter evidence.

Disputed claims to modus or exemption will be decided.

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* See page 117, *ante.*

LIST OF FORMS.

Notice.
Secretary's letter of instructions.
Power of attorney.
Instructions as to adjournment of meeting.
Form of adjournment.
Instructions as to Assistant Commissioners.
Draft agreement (common form).
Draft supplemental agreement.
Draft agreement between rectors impropriate, &c. and landowners, containing a provision for a particular estate, exempt from the payment of tithes.
Draft agreement for a parish consisting of various townships, and in which there are various titheowners, moduses and exemptions from tithes, &c.
Draft agreement between rector (sole titheowner) and landowners, in which the general contents of the different descriptions of land are specified, and by which land is given for an equivalent part of the tithes of the parish.
Draft agreement, containing clauses as to hop grounds, &c. when rector is sole titheowner.
Draft agreement, containing clauses as to hop grounds, where the rectorial and vicarial tithes are vested in different persons or in different rights.
Requisition as to hop-grounds and market-gardens.
Declaration for merging tithes.
Patron's consent.
Valuer's declaration.
Attorney and solicitor-general's opinions as to copying the instruments of apportionment.
Report and instructions as to surveys.
Instructions as to forms of apportionment and maps.
Form of apportionment.
Instructions as to settling boundaries under Tithe Act.
Report as to special adjudications, 1st May, 1838 (p. 117).
Memorandum of Commissioners as to rating, 22d Aug. 1838. (See note [b], p. 37.)
The like as to compulsory cases, 27th Aug. 1838. (See note [b], p. 33; also note [c], p. 62, and note [a], p. 68.)
Notice of Commissioners' intention to make award, and letters to officiating ministers and churchwardens, with notice.
Form of award. (See p. 136.)
Course of proceedings in making same (p. 138).
Secretary's letter of instructions (p. 138).

GENERAL INDEX.

NOTE.—*The Index to Clauses in the Acts* 1 *Vict. c.* 69, *and* 1 *&* 2 *Vict. c.* 64, *are preceded by references to those Acts in italics, and the figures standing before those references between brackets are the clauses of the original Act affected by the amendments.*

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THE END.

R. CLAY, PRINTER, BREAD-STREET-HILL.

2 & 3 Vict. c. 62.

AN ACT

TO

EXPLAIN AND AMEND THE ACTS

FOR THE

COMMUTATION OF TITHES

IN

ENGLAND AND WALES;

WITH

AN INTRODUCTION, NOTES, AND INDEX.

BY

JOHN MEADOWS WHITE, ESQ.

SOLICITOR TO THE TITHE COMMISSIONERS FOR ENGLAND AND WALES.

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2 & 3 Vict. c. 62.

AN ACT TO EXPLAIN AND AMEND THE ACTS FOR THE COMMUTATION OF TITHES IN ENGLAND AND WALES.

HEADS OF CLAUSES.

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ACT, &c.

2 & 3 VICT. c. 62.

INTRODUCTION AND ANALYSIS.

THE object of this Act is to extend the existing facilities for Merging and Commuting Tithes, and also to meet certain anomalous cases which are not in themselves important, but still, as being exceptions to the general state of the tithe arrangements of the kingdom, are found in the respective districts where they exist to impede such merger or commutation.

Preamble.

The Acts recited in the preamble are—

6 & 7 W. 4. c. 71. Tithe Commutation Act.

1st. The Tithe Commutation Act, 6 and 7 W. IV. c. 71, passed in 1836. Under this Act 4539 voluntary agreements have been allowed, and 428 compulsory awards either have been completed or are in progress. These, added together, exceed a third of the kingdom.

Notices for agreements in other places have also been given to the extent of 4279.

1 Vict. c. 69. Tithe Commutation Amendment Act.

2dly. The 1 Vict. c. 69, passed in 1837, which is an extension and amendment of the former Act, and enables the Commissioners to adjust boundaries, to dispense with sealed maps in cases of voluntary apportionments, and otherwise to facilitate the general working of the tithe commutations.

1 & 2 Vict. c. 64. Tithe Merger Act.

3dly. The 1 and 2 Vict. c. 64, passed in 1838, extends the powers of the first Act, § 71, for merging tithes and rent-charge.

Of the thirty-eight clauses, however, of the new Act, only six, viz. the 8th, 10th, 13th, 14th, 15th, and 23d, can strictly be called amendments of the original Act of 1836. The remaining thirty-two are but extensions of its principles and provisions, or arise out of the provisions of the two amendment Acts of 1837 and 1838.

The present Act may be thus divided:

CLAUSES I.—VII.

PROVISIONS FACILITATING AND EXTENDING THE POWERS OF MERGER OF TITHES AND RENT-CHARGE.

Under the Tithe Commutation Act, § 71, persons having the fee-simple of tithes or rent-charge may, by such instrument as the Commissioners shall approve, declare them merged in the freehold and inheritance of the lands out

of which they issue. The Act 1 and 2 Vict. c. 64, extends this power to persons having powers of appointment, tenants for life, &c., and to copyholds. The advantages of the provisions have been felt in two ways: in one that they enable parties holding lands commonly called tithe free, but which, in fact, are liable to tithe, although, in consequence of unity of possession, the tithes are not gathered, at once to declare them merged and extinguished; in the other, that in the case of tithes which are merged before the commutation, the landowner is saved from the charge of his portion of the expenses. To carry these advantages still further, the following provisions have been introduced.

Clause 1 declares charges on tithes or rent-charge, which have hitherto precluded or impeded the merger, to attach on the land. The land, although it has this charge attached to it, gets rid of the residue of the tithe or rent-charge beyond the value of the charge.

Clause 2 enables parties proposing to merge, with the consent of the commissioners and landowners, to apportion the charges referred to in the first clause on a part of the lands, thus exonerating the remainder of the lands from the burthen of the charge.

The portion thus fixed must be of three times the annual value of the charge—a limita-

tion necessary for the security of the parties entitled to its benefit; and this test of value has been taken from the Tithe Commutation Act, § 58, where the power of special apportionment is given to landowners.

Clause 3 has been introduced to enable landowners to ascertain in certain cases how local charges and assessments are made, and what particular lands they affect.

Clause 4 extends the power of special apportionment of charges upon tithes or rent-charges, whether sought to be merged or not. The consent of the Bishop is required, the landowners not being interested in it.

Clause 5 provides that, in any such case of special apportionment, the costs shall be borne by the party effecting it, he being the person benefited.

Clause 6 extends the power of merger to glebe, and will enable the owners of glebe to let it without being subject to tithe. This provision is of more importance than it at first seems, as questions of glebe being titheable in the hands of laymen, and not in those of the church, and the like, are of a most troublesome and vexatious kind. It will also supersede the necessity of assigning a contingent rent-charge on glebe in respect of the tithes so merged.

Clause 7 enables parties who, under the

third Act, were desirous of merging tithes in copyholds to do so in a way which will secure the benefit of the merger to the copyholder.

CLAUSES VIII.—XII.

PROVISIONS FOR AMENDING ERRORS AND GIVING FURTHER FACILITIES FOR AGREEMENTS AND AWARDS.

Clause 8 enables the commissioners, in certain specified cases, to amend confirmed agreements and awards before apportionment. These cases are limited to fraud or error—such as the insertion of a wrong name,—of lands actually tithe free, as if they were subject to tithe,—and the like. The mode of effecting the amendment is by a separate supplemental award.

Clause 9 enables landowners and tithe-owners, by a separate agreement, after an award, to commute Easter offerings, and other specified matters of ecclesiastical dues or render. This clause is merely an extension of § 90 of the first Act, which allows such payments to be commuted by the parochial agreement alone, and prevents their being made in cases of compulsory awards.

Clause 10 extends sections 10 and 11 of the Tithe Amendment Act, the first of which enables parties to provide for the period between the end

of former compositions and the commencement of the rent-charge, and the latter to fix the day for the commencement of the rent-charge, to the cases of awards by the commissioners. By the first Act, § 67, the rent-charge must begin on the 1st January after the confirmation of the apportionment. This left the landowners open to a charge for the composition of the preceding quarter, at a period when perhaps no tithes would have been gathered; or on the other hand it left the titheowner without a certain portion of his tithes previous to the commutation; and it left both parties open to dispute and litigation. The Amendment Act enables parties to make agreements in these respects; and this clause extends the power to cases in which the commissioners interfere.

Clause 11. By the 71st sec. of the first Act, lands liable (like glebe) to intermittent payment of tithes become liable to a similar kind of rent-charge, i. e. where lands formerly held by the Cistercian monks were in the hands of the owners, they were not liable to tithes. When in the hands of tenants merely, they were. By this provision an average and permanent rent-charge may be fixed; thus doing away with the uncertainty and inconvenience of the contingency.

Clause 12 declares that the provisions for fixing contingent rent-charges, and also Clause 11 of this Act, shall extend to crown-lands, a point on which some doubts had arisen which are now set at rest.

CLAUSES XIII.—XIV.

LAMMAS LANDS AND COMMONS.

Clause 13 seeks to remedy an inconvenience of great extent, arising out of the peculiar tenure of lands subject to a change of occupier in the course of the year. By the first Act the tithe-owner is to receive a rent-charge equal to the average of tithes paid during the seven years ending Christmas, 1835; this rent charge is to issue out of the lands. Hence, in the case of Lammas lands, which are in the hands of the private owners, from the 2d February to the 1st August, and thrown open to inhabitants, or commoners, for the remaining part of the year, tithe in kind being taken from both, it has been apprehended that a rent-charge which included the value of those tithes from both classes of occupiers would fall, in fact, on the private occupier alone; or, if payable at different half years, would press unduly upon both. To remedy this, the present clause distinguishes the rent-charge in one of an ordinary kind in

of rent-charge. With a view to obviate this, clause 20, which is a provision similar to those in the Church Building Acts and Railway Acts, declares the title valid, and gives remedy by way of damages to claimants against the freehold.

Clause 21 enables charitable feoffees to avail themselves of the provisions for giving land.

CLAUSES XXII.—XXV.

MISCELLANEOUS CLAUSES AFFECTING APPORTIONMENTS, &c.

The Tithe Amendment Act, 1 Vict. c. 69, § 1, enabled the landowners to agree on an existing map, and dispensed with the rigid testing of it by the commissioners in cases of voluntary apportionments.

Clause 22 enables the commissioners in compulsory cases to do the same.

Clause 23 enables them to fix the expenses of apportionment upon the parties justly liable to bear them in cases of certain landlords with intermediate lessors and lessees.

Clause 24 saves the expense of distinguishing, in compulsory awards previous to the apportionment, the separate lands and rent-

charges, payable to or by one owner in respect of different rights. As, for instance, where one titheowner holds the tithes of several prebendaries, or where a part of the tithes has been sold to the landowners and part retained. Under this clause a gross rent-charge may be fixed in the award, and the separation of it will be deferred to the apportionment. The clause has been introduced to meet certain cases which have actually occurred, and are likely, without it, materially and, in fact uselessly, to enhance the expense of the commutation.

Clause 25 enables the commissioners to adjourn a meeting without the expense of attending on the spot for the purpose.

CLAUSES XXVI.—XXXIII.

FRUIT AND HOP CLAUSES.

These clauses have been introduced at the request of the fruit growers, putting the tithe of fruit and orchards on the same kind of footing as hops under the first Act.

CLAUSES XXXIV.—XXXVI.

BOUNDARIES.

Clause 34 enables the commissioner, or any assistant-commissioner, to settle disputed

boundaries between parishes or landowners, on the application of two thirds of the landowners, in cases of parochial boundary, and of the landowners interested in any question of private lands. The consent of the lord is required in any question of the boundary of copyholds.

In the provisions of the Tithe Amendment Act, §§ 2 and 3, for setting out boundaries, a power of appeal is given to the Queen's Bench; but this power is inoperative, as it does not provide for the mode of dealing with such cases by the court. Hence the provision of clause 35 has been introduced to enable the court to deal as it sees fit with such cases.

Clause 36 enables the commissioners to apportion the costs of any enquiries into boundaries among the parties interested.

CLAUSES XXXVII.—XXXVIII.

INTERPRETATION.

Clause 37 provides that the three former Acts and this shall read as one Act.

Clause 38 contains the usual provision for altering the Act in the session in which it has passed.

AN ACT, &c.*

2 & 3 VICT. c. 62.

An Act to explain and amend the Acts for the Commutation of Tithes in *England* and *Wales*.

[17*th August*, 1839.]

Preamble.

WHEREAS an Act was passed in the seventh year of the reign of his late Majesty King WILLIAM the Fourth, intituled, "An Act for the Commutation of Tithes in *England* and *Wales*:" 6 & 7 W. IV. c. 71.

And whereas an Act was passed in the first year of the reign of Her present Majesty to amend the recited Act: 1 Vict. c. 69.

And whereas an Act was passed in the second year of the reign of Her present Majesty, intituled, "An Act to facilitate the Merger of Tithes in Lands:" 1 & 2 Vict. c. 64.

* The Notes in this edition are, for the most part, the reasons given by the Commissioners for the several amendments and extensions of the former Acts which this Act has introduced, and which the Commissioners have permitted the Editor to use.

And whereas it is expedient to explain and amend the said Acts in certain respects;

BE IT THEREFORE DECLARED AND ENACTED, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in every case where any tithes or rent-charge shall have been or shall hereafter be released, assigned, or otherwise conveyed or disposed of under the provisions of the said Acts, or any of them, or of this Act, for merging or extinguishing the same, the lands in which such merger or extinguishment shall take effect shall be subject to any charge, incumbrance, or liability, which lawfully existed on such tithes or rent-charge previous to such merger to the extent of the value of such tithes or rent-charge; and any such charge, incumbrance, or liability, shall have priority over any charge or incumbrance existing on such lands at the time of such merger taking effect; and such lands and the owners thereof for the time being shall be liable to the same remedies for the recovery of any payment and the performance of any duty in respect of such charge, incumbrance, or liability, or of any penalty o-

On merger of tithes or rent-charge, charges thereon to be charges on lands.

damages for non-payment or non-performance thereof respectively, as the said tithes or rent-charge or the owner thereof for the time being were or was liable to previous to such merger.*

* The greatest difficulties and impediments have arisen in the practical working of the present Merger Act, 1 & 2 Vict. c. 64, by reason of charges or incumbrances subsisting upon the tithes sought to be merged. The commissioners have in no case felt themselves justified in sanctioning by their confirmation any merger of tithes, subject to a charge or incumbrance of which they have been made aware, whatever its nature, or however insignificant in amount; and for this obvious reason, that they thereby extinguished the security, leaving it doubtful whether any remedy would remain for the recovery of the charge or at any rate driving the party to resort to a complex, tedious, and expensive process for the enforcement of his rights, in place of the prompt and simple one before available. It has been found in practice that, in by far the majority of instances, the charges imposing obstacles to merger have been extremely trifling in amount, such as for the repairs of the chancel, small stipends, and fee-farm rents; and not only have the facilities of merger been seriously lessened, but in consequence of the frequent insertion of ineffective merger clauses in parochial agreements, the process of commutation has in numerous parishes been altogether impeded.

The object of this clause is to apply a remedy for the evil, by making the charge or incumbrance, hitherto subsisting upon the tithes, a prior lien upon the lands in which the tithes shall be merged. Its effect will be to remove the obstacles which now oppose the progress of the commutation without prejudice resulting to any party: not to the person merging, for it is his option; not to the person entitled to the benefit of the charge, for his security is bettered; not to the persons having other incumbrances upon the lands and to which the charge, hitherto subsisting upon the titles, is preferred, inasmuch as it must be presumed that such charge was not equivalent to the value of

Power for special apportionment of such charge on lands, being of three times the value of charge.

2. And be it enacted, that every person entitled to exercise the powers for merger of tithes or rent-charge in land under the said Acts, or any of them or this Act, may, with the consent of the Tithe Commissioners for the time being under their hands and seal of office, and of the person to whom the lands in which such merger or extinguishment shall take effect shall belong, either by the deed or other instrument or declaration by which such merger shall be effected, or by any separate deed, instrument, or declaration, to be made in such form as the commissioners shall approve, specially apportion the whole or any part of any such charge, incumbrance, or liability affecting the said tithes or rent-charge so merged or extinguished, or proposed to be merged or extinguished in such lands, upon the same or any part thereof, or upon any other lands of such person held under the same title and for the same estate in the same parish, or upon the several closes or portions of such lands, or according to an acreable rate or rates upon lands of different quality, in such manner and proportion, and

the tithes merged; and consequently by the Act of merger the land derives an augmentation in value which more than compensates for the new incumbrance which attaches.

to the exclusion of such of them as the person intending to merge the same, with such consent as aforesaid, may, by any such deed, instrument, or declaration direct: Provided always, that no land shall be so exclusively charged unless the value thereof shall, in the opinion of the said commissioners, be at least three times the value of the amount of the charge, incumbrance, or liability, charged or intended to be charged thereon, over and above all other charges and incumbrances, if any, affecting the same.*

* This clause is analogous to the 58th section of the original Tithe Act, which enables a party, with the consent of the titheowner, specially to apportion the amount of rent-charge fixed on his lands, on a part of them only, such part being at least three times the value of the amount of rent-charge imposed thereon. Great benefit has resulted from this provision, particularly in limiting the expenses of surveying, mapping, &c. to the curtailed quantity of land actually given in charge. But the prominent advantage of the present clause will be found in future sales or exchanges.

Suppose a large property and a trivial charge upon the tithes merged; this insignificant sum would ride over the estate, to the extent of the tithes merged, and upon every future disposition of even the most minute portion of it, recourse must be had, at an increased expense, to an indemnity, or some other equally unsatisfactory expedient. This clause enables the parties to confine the charge to a portion only of the lands, leaving the residue unincumbered for the purposes of future alienation or enjoyment. The provisions of the 58th section of the original Tithe Act, whereby the extent of the security for the charge is abridged, are, in a great measure, reenacted

Assessor or ollector, after otice, to spe- fy in Assess- ent names of e occupiers essed.

3. And be it enacted, that the assessor or collector of any rate or tax shall, within forty days after the receipt of a notice in writing, signed by any landowner or titheowner interested therein, specify in his assessment, made for the purpose of collecting and levying such rate or tax, the names of the several occupiers of tithes, lands, and tenements subject to such rate or tax, as well as the sum assessed on the tithes, lands, or tenements held by each such occupier.*

Power for ecial Appor onment on ithes or Rent- arge.

4. And be it enacted, that where the whole of the great tithes, or the whole of the small tithes, or the respective rent-charges in lieu thereof, shall be lawfully subject to any such charge, incumbrance, or liability, and the person entitled to such tithes or rent-charge re-

here; and particularly the stipulation that the portion of the land so exclusively charged shall be at least three times the value of the amount of such charge, with the additional security of such value being calculated over and above existing charges.

* The object of this clause is to ascertain how local charges and assessments are made in certain cases, and what particular lands they affect. Thus, in cases where there are drainage rates charged against an estate, it is often found that the irregular manner in which the assessment is made, precludes the landowner from ascertaining which particular lands or closes are really subject to the rate. It is thought by those who introduced this clause that it will meet the difficulty.

spectively, shall be desirous of apportioning such charge, incumbrance, or liability respectively, exclusively upon any part of such tithes or rent-charge, although such person has not the power or does not intend to merge the same under the said Acts or this Act, such person may, with the like consent of the said commissioners, and in such manner as they shall see fit and prescribe, and also with the consent of the bishop of the diocese, specially apportion such charge, incumbrance, or liability respectively upon any part or portion of the tithes or rent-charge respectively subject thereto, not being in the opinion of the said commissioners less than three times the value of the said charge, incumbrance, or liability, or of such part thereof as shall be so apportioned thereon or intended so to be.*

* This clause is analogous in principle to clause 2. There is this important difference, however, that here the party does not merge, either not possessing the power or not desiring to do so. The clause meets the case of the whole of the great or small tithes, or the whole rent-charge, for which they may be respectively commuted under the tithe act, being liable to some minute charge or incumbrance, which, with a view to facilitate future dispositions of any part of the whole tithes or rent-charge, it is desirable specially to apportion. It accordingly allows the charge to be put upon a part of the subject, the whole of which hitherto formed the security; but in so doing, all the safeguards of the former clause are expressly inserted, with the additional requirement of the consent of the bishop of the diocese.

Expenses of special apportionment to be borne by parties applying for same.

5. And be it enacted, that in every such case of special apportionment, the costs and expenses of or incident thereto shall be borne by the party at whose instance the same shall have been made, and shall be recoverable as other costs of apportionments are recoverable under the provisions of the said recited Acts, or either of them, or of this Act.*

Tithes and rent-charge of glebe may be merged, 1 and 2 Vict. c. 64, § 3.

6. And be it declared and enacted, that the provisions of the said Acts and this Act for merger or extinguishment of tithes or rent-charge instead of tithes in the lands out of which such tithes shall have been issuing, or whereon such rent-charge shall be fixed, do and shall extend to glebe or other land, in all cases where the same and the tithes or rent-charge thereof shall belong to the same person in virtue of his benefice, or of any dignity, office, or appointment held by him.†

* This clause simply provides, in conformity with the 58th section of the original Tithe Act, that the expenses of the special apportionments under the preceding clauses shall be borne by the parties at whose instance they are effected, and to whose benefit they tend.

† There is no reason on principle why the facilities and benefits of merger secured under the existing Acts should not be extended to glebe lands. Little if any prejudice can ensue to the ecclesiastical successor, where the glebe is in his own occupation; and should he let it, he will obtain a cor-

Provision for deducting value of tithes and rent-charge from arbitrary fines, in cases of merger in copyholds, 1 and 2 Vict. c. 64, s. 4.

7. And be it enacted, that in every case of merger of tithes or rent-charge issuing out of land of copyhold tenure, and subject to arbitrary fine, it shall be lawful for the said commissioners, on the application of the owner of such land, to ascertain, by such ways and means as they shall think fit, the annual value of the tithes or rent-charge so merged or intended to be merged; and the said commissioners shall in such case cause to be endorsed on the deed declaration or other instrument effecting such merger, a certificate under their hands and seal, setting forth such annual value so ascertained; and in every case of future assessment of fine on the lands which before such merger were subject to such tithes or rent-charge, the parties entitled to such fine shall assess the same as if such lands were subject to the tithes or rent-charge of which the annual value shall be so

responding increase in his rent. But a direct advantage is derived to the clerical owner of the glebe by the power thus extended to him, inasmuch as he will thereby be enabled to save such proportion of the expenses of mapping and apportionment as apply to his glebe.

This clause has been inserted with a view to obviate the doubts which exist whether the present Merger Act extends to authorize a rector or vicar to merge the titles of his glebe, the words "settled to the same uses" having been thought to meet only the case of a tenant for life under an actual legal instrument of settlement.

endorsed; and the production of such deed, declaration or instrument of merger, or of a duplicate thereof, with such certificate endorsed, or of an office copy of such deed, declaration, or instrument and certificate endorsed thereon, shall be sufficient evidence of the annual value of such tithes or rent-charge.*

Power to make award by way of supplement to parochial agreement, in cases of fraud, &c.

8. And be it enacted, that, notwithstanding anything in the said Acts or any of them contained, in any case where a parochial agreement for rent-charge or for giving land instead of tithes, or any compulsory award, has been duly confirmed by the said commissioners, and it shall appear to them, at any period before the confirmation of the apportionment of such rent-charge, that by reason of fraud, or by the omission or insertion through error of the tithes or lands of any party thereto, or of the name of any person, whether as titheowner or landowner, who ought or, as the case may be, who ought not to have been party thereto, or any other manifest error, that such agreement

* Where a merger of the tithes of copyhold land has been effected, the land in the hand of the copyholder becomes proportionably more valuable, and the benefit of the merger would accrue to the lord, who in cases of arbitrary fines would be entitled to assess the lands as tithe free. This provision has been introduced to obviate such a result.

or award would be unjust, and that if such fraud, omission, insertion or other manifest error had not occurred, the said commissioners would have come to a different conclusion in respect of such agreement or award, and would have declined to confirm, or would have varied the same previous to such confirmation, it shall be lawful for the said commissioners, if they shall see fit, and in their sole discretion, but not otherwise, by a separate award to rectify such agreement or award in any of the matters aforesaid, in such manner as to them shall seem just; and all the provisions and powers of the recited Acts relating to compulsory awards shall be applied in every such case, in respect of the matter so dealt with, in as full a manner as if no such agreement or award had been made, or as if the same were made in respect of a separate district: provided always, that in every such separate award the matter so dealt with, and the grounds on which the commissioners shall have seen fit to make the same, shall be recited or otherwise set forth in the draft thereof, in addition to the other particulars required by the said Acts, or any of them, to be set forth in compulsory awards; and every such award shall, in the notice of meeting for hearing objections thereto, be called a

separate award by way of supplement to the parochial agreement or award in the parish to which such separate award relates.*

* The commissioners have been distinctly advised by the law officers of the Crown, that when a parochial agreement (and the same principle is equally applicable to an award) has once been confirmed by them, they possess no power to amend, vary, or annul its provisions, even though it should be clearly shown to have been made upon an erroneous supposition of the rights of the parties, and to have included interests which it ought not, or to have omitted others which it ought to have included. Thus, for example, several such cases have occurred, and agreements have been confirmed which have omitted to assign any rent-charge to a separate titheowner in the parish, or have improperly or inadvertently fixed a rent-charge on tithe-free lands.

The commissioners have also been advised, that the recitals in a confirmed agreement or award must govern the whole future apportionment, and thus the error or wrong which affects, or is worked by, either of the former instruments, would, as far as the power of the commissioners is concerned, pervade and be perpetuated in the future and final process of the commutation.

It may also be observed, that not only would the commissioners' hands be tied from relieving the party against the errors and omissions of the agreement when confirmed, but his remedy before another tribunal would in most cases be extremely doubtful, and in all difficult of access, and tedious and expensive in prosecution.

Thus, in one case which has occurred, the titheowner and landowners agreed upon the terms of commutation on the faith of an existing survey, which subsequently turned out to be in error in quantity to the extent of upwards of a thousand acres.

The object of the clause now under consideration is to confer upon the commissioners a discretionary power, to be

9. And be it enacted, that it shall be lawful at any time before the confirmation of any apportionment after a compulsory award in any parish, for the landowners and tithe-owners, having such interest in the lands and tithes of such parish as is required for the making a parochial agreement, to enter into a parochial agreement for the commutation of Easter offerings, mortuaries or surplice fees, or of the tithes of fish or fishing, or mineral tithes; and all the provisions, conditions, limitations and powers of the said recited Acts or any of them, relating to parochial agreements, so far as the same shall in the judgment of the commissioners be applicable to the subject of the proposed commutation, shall be observed and applied in every such case as if no previous

Power, after award, to make parochial agreement for Easter offerings, &c. 6 and 7 W. 4, c. 71, s. 90.

exercised solely by them, for the remedying such evils as have been described in any of the cases specified in the clause.

This power must be called into action at some time before the confirmation of the apportionment, which has been found materially instrumental in detecting the errors and omissions of the agreement, and it must consequently be exerted before the final completion of the process of commutation. In fact, the additional power conferred merely gives an extension of the time during which the equitable jurisdiction of the commissioners may be exercised.

The mode prescribed is a supplementary award, with the same requisites as a compulsory award, but setting out the special grounds and matter which render it necessary.

award had been made; and every such agreement may fix the period at which the rent-charge to be paid under such agreement shall commence, but so nevertheless that the same and the subsequent payments thereof shall be made on some day fixed for the payment of the rent-charge awarded in such parish, and shall be recoverable from time to time by the means provided in the said Acts, or either of them, for the recovery of the rent-charges in the said parish.*

* Easter offerings and the other payments specified in this clause are expressly excepted under the 90th section of the Tithe Act from the process of commutation.

That section, however, confers a power upon the parties to a parochial agreement, by special provision to be inserted therein, and to be specially approved by the commissioners, to commute the several payments which it includes.

But such permissive authority is confined exclusively to voluntary agreements, and cannot be made available where the tithes are dealt with under compulsory award.

Adverting to the nature of most of the payments in question, and to the difficulty and uncertainty generally attending their collection, it has been thought desirable to increase the facilities for their commutation.

The object, therefore, of the enactment is, simply to extend the provisions of the 90th section of the Tithe Act to cases in which tithes have been dealt with under a compulsory award, and thus to put the parties under both processes of commutation, as far as the several payments in question are concerned, upon an equal footing.

This object is to be effected at any time before the confirmation of the apportionment, by a parochial agreement,

Power to fix commencement of rent-charge.

10. And be it enacted, that it shall be lawful for the commissioners in any compulsory award, or by any supplementary award, in cases where the parties shall not have fixed the same by parochial agreement as under the said secondly recited Act is provided, to fix, or where the commissioners shall not have so fixed, for the landowners and titheowners having such an interest in the land and tithes of any parish as is required for making a parochial agreement, to enter into a supplementary agreement for fixing such sum as to them respectively shall seem fit, to be paid in consideration of the time (if any) which may intervene between the termination of any previous agreement or composition for the payment of tithe, and the time at which the rent-charge shall commence, either under such compulsory award or parochial agreement, where the same shall have been previously made; and also for the said commissioners, by their said award, to fix, or for the landowners and titheowners having such interest in the lands and tithes of any parish as is required for making a parochial agreement

to which all the provisions and requisites of an ordinary agreement for the commutation of tithes under the Tithe Act, so far as they can be made applicable to the subject, are required.

at any time after such award, and before the confirmation of the apportionment, to enter into a supplementary agreement for fixing the period at which the rent-charge, to be paid under such award, shall commence in like manner and subject in both cases to the like conditions as are provided in the said secondly-recited Act enabling parties to agree to pay any such sum, or to fix the period at which any rent-charge shall commence.*

Fixed rent-charge may be substituted for contingent rent-charge on lands partially exempt, 6 & 7 W. IV. c. 71, § 71.

11. And be it enacted, that where lands are exempted from the payment of tithes, or of rent-charge instead of tithes, whilst in the occupation of the owner of such lands, by reason of having been parcel of the possessions of any privileged order, it shall be lawful for the re-

* Under a compulsory commutation, neither the commissioners nor the parties have the power to provide for the period intervening between the last payment of any composition for tithes and the commencement of the rent-charge, but such a power is given to the parties in cases of voluntary commutation by 1 Vict. c. 69, § 10. By the 6 & 7 W. IV. c. 71, § 68, the rent-charge must commence on the 1st of January following the confirmation of the apportionment. But the 11th section of the 1 Vict. c. 69, enables the parties to fix other periods for its commencement.

This clause extends the provisions of the 10th and 11th sections of the Tithe Amendment Act, to cases of award, and enables the parties when the commissioners do not interfere to exercise the power in question.

spective owners of the said lands and tithes or rent-charge, by the parochial agreement for the rent-charge, or by a supplemental agreement in cases where the parochial agreements or any award shall have been confirmed by the said commissioners, to be made in such form as the commissioners shall direct or approve, to agree to the payment, or for the commissioners in the case of a compulsory award, with the consent of the respective owners of the said lands and tithes, to award the payment of a fixed and continuing rent-charge, without regard to the change of occupation or manurance of such lands, equivalent in value, according to the judgment of the commissioners, to such contingent rent-charge; and such lands shall, from the date of the confirmation by the commissioners of such parochial agreement or supplemental agreement or award, as the case may be, or from such date as shall be fixed by the parties, with the approval of the said commissioners, in any such agreement or supplemental agreement, be subject to such fixed rent-charge instead of the contingent tithes or rent-charge to which such lands were subject previous to such agreement or supplemental agreement or award being made; and every such fixed rent-

charge shall from such period respectively be paid and recoverable by the means provided in the said Acts, in like manner as if the same had been the rent-charge originally fixed in any parochial agreement or award in respect of the said tithes.*

Provisions of 6 & 7 W. IV. c. 71, § 43 & 71, and for substituting fixed rent-charge extended to crown lands.

12. And whereas certain crown lands, by reason of their being of the tenure of ancient

* A large portion of the county of Lincoln, from having formed parcel of the possessions of the privileged orders, or otherwise by custom, is not liable to the payment of any tithes whilst in the occupation of the landowner himself, although liable to full tithes when in the occupation of his tenant.

In other instances the privilege or custom is reversed, and the lands are exempt from the payment of any tithes when occupied by a tenant, or "outner," although becoming liable to full tithes when in the occupation of a landowner or resident.

Under an award the commissioners have no power to sanction any compromise between the tithe and landowners, by awarding a fixed rent-charge payable under all circumstances, and without reference to any change of occupation, but are constrained by the provisions of the tithe Act to fix a contingent rent-charge, declaring it payable (like the tithes) only when the lands out of which it issues are occupied by an unprivileged party, and ceasing to be payable when occupied by those who are privileged. (6 & 7 W. IV. c. 71, §§ 43, 54, 71.)

In the case of voluntary agreements the parties are frequently willing to compromise these privileges; and as it is most desirable that they should be compromised, this clause has been introduced to confer a similar power in cases in which the rent-charge is fixed under compulsory award.

demesne or otherwise, are exempted from payment of tithes, whilst in the tenure, occupation, or manurance of Her Majesty, her tenants, farmers, or lessees, or their under-tenants, as the case may be, but become subject to tithes when aliened, or occupied by subjects not being tenants, farmers, or lessees of the crown; and doubts have arisen how far the provisions of the said first recited Act relating to lands heretofore parcel of the possessions of any privileged order, or in the nature of glebe, or otherwise in like manner privileged and partially exempt, are applicable to such crown lands: Be it declared and enacted, that all and every the said provisions of the said first-recited Act do extend to such crown lands, and that the provision lastly in this Act contained for substituting a fixed rent-charge, instead of a contingent rent-charge, on lands partially exempt from tithes, shall extend and be applicable to such crown lands as aforesaid: Provided always, that no such fixed rent-charge shall be substituted instead of such contingent rent-charge on such crown lands, without the consent of the persons or officers who are by the said first-recited Act respectively required to be substituted in cases of commutation of tithes, where

6 & 7 W. IV. c. 71, s. 13.

the ownership of lands or tithes is vested in Her Majesty.*

Provision for tithes of Lammas lands, &c.

13. And whereas large tracts of land, called Lammas lands, are in the occupation of certain persons during a portion of the year only, and are liable to the tithes of the produce of the said lands increasing and growing thereon during such occupation, and at other portions of the year are in the occupation of other persons, and in their hands liable to different kinds of tithes arising from the agistment, produce, or increase of cattle or stock thereon; and by reason of such change of occupation, such last-mentioned tithes cannot be commuted for a rent-charge issuing out of, or fixed upon, the said lands; and the said recited Acts are thereby rendered inoperative in the several parishes where such Lammas lands lie: And whereas the said Acts are in like manner inoperative in certain cases, where a personal right of commonage, or a right of common in gross, is vested in certain persons by reason of inhabitancy or occupation in the parish where any common may lie, or by custom or vicinage,

* The same powers are here declared to extend to crown lands, subject to the consents required under 6 and 7 Will. IV. c. 71, § 13.

but without having such right of common so annexed or appurtenant to, or arising out or in respect of any lands on which any rent-charge could be fixed instead of the tithes of the cattle or stock, or their produce, increase, or agistment on such common, annexed to such personal right; for remedy thereof, Be it enacted, that in every case where, by reason of the peculiar tenure of such lands, and the change during the year of the occupiers thereof, or of such right of commonage, a rent-charge cannot, in the judgment of the said commissioners, be fixed on the said lands in respect of cattle and stock received and fed thereon, or of the produce and increase of such cattle and stock, at such portion of the year as the said lands are thrown open, or where such right of commonage alone exists, it shall be lawful for the parties interested in such lands or commons and the tithes thereof, in the case of a parochial agreement, or for the commissioners in the case of a compulsory award, in every such parochial agreement or award respectively, or by any supplemental agreement in the nature of a parochial agreement, or by a supplemental award, as the case may be, where any parochial agreement or award has been already made, to fix a rent-charge, instead of the tithes of such

Lammas land or commons, to be paid during the separate occupation thereof by the separate occupiers, in like manner as other rent-charges are fixed by the said Acts or any of them, and to declare in such agreement or award, or supplemental agreement or award, as the case may be, such a sum or rate per head to be paid for each head of cattle or stock turned on to such Lammas land or commons, by the parties entitled to the occupation thereof, after the same shall have been so thrown open, or by the parties entitled to such right of commonage as aforesaid; and every such sum shall be ascertained and fixed upon a calculation of the tithes received in respect of such last-mentioned occupation or right for the period, and according to the provisions for fixing rent-charges in the said recited Acts, and shall be due and payable by the owner of such cattle or stock on the same being first turned upon such lands or commons, and shall be recoverable by the persons entitled thereto, by distress and impounding of the cattle or stock in respect of which such sum shall be due, in like manner as cattle are distrained and impounded for rent, and be subject to the same provisions as to distress and replevin of the same as are by law provided in cases of distress for rent: Provided always,

that nothing herein contained shall extend to Lammas lands where no tithes, or payments instead of tithes, have been taken during the seven years ending Christmas, 1835, in respect of the cattle or stock received and fed thereon, or of the produce and increase of such cattle or stock at such portion of the year as the said lands are thrown open.*

* In various parts of the kingdom there are considerable tracts of land which are held under Royal Grant, or otherwise, by persons having a right in severalty in such lands only during a certain period in each year, usually from Candlemas to Lammas, or thereabouts, from which time these lands are thrown open, until the return of Candlemas, to persons who have a commonable right thereupon, by reason of inhabitancy or some other privilege.

In the county of Hertford there is a considerable quantity of rich land so circumstanced, in which the right of pasturage is of great value, and numbers of milch cows are kept by the inhabitants in the autumn of each year.

In the parish of Tottenham, Middlesex, there are said to be 400 acres of such Lammas land, while in another parish, in Hertfordshire, the vicar is said to receive £40 per annum as the tithe of milk, &c. accruing from such lands, his whole income being but £200.

It is impossible, equitably, to subject lands, thus circumstanced, in the ordinary way to any rent-charge beyond what may be an equivalent for such tithes as may accrue during the period they are held in severalty.

If fixed upon the land, with the usual remedies of distress and entry, it must be paid by the person who has the possessory right in such land, viz. the person who has the ownership from Candlemas to Lammas, and he must recover as he can from the parties who share in the beneficial interest in the lands with

Rent-charge in respect of tithes of common appurtenant, to be a charge on the allotments made in respect of the lands to which right of common attached.

14. And whereas in certain cases of commons hereafter to be inclosed, allotments may be made in respect of tenements and hereditaments to which a right of going on such common is appurtenant, to be a charge on the allotments made in respect of the lands to which right of common attached.

him. The difficulty, or rather impossibility of this, will be obvious, upon considering the utter inability of each severalty holder to identify the particular stock of the inhabitants which had grazed upon his own individual portion of such lands, or to ascertain in what proportion he would have an equitable claim as against such different inhabitants.

Several agreements have been entered into which involve this point of difficulty, and, as the provisions of the existing Act afford no means of apportioning the rent-charge so agreed upon, this clause has been framed with a view to remedy the evil, and as being, at the same time, less open to objection than any other which could be devised.

Without this clause, either a total loss of this kind of tithes must have ensued, unless they were left uncommuted, or otherwise a charge would have been imposed to the direct prejudice of the holders in severalty of such lands, without any practicable means by which they could indemnify themselves.

In the north of England there are individuals who have a right of pasturage upon certain commons, which is of a personal nature, and not appurtenant to any ancient tenement or estate.

In some instances, the persons possessed of such right have power to graze their stock upon certain "heafs" on such commons, and to drive off from such "heafs" all other stock depastured on the common. In this case they exercise, and are entitled to, a severalty right on such "heafs," upon which the commissioners may, without difficulty, be enabled to fix a rent-charge; for although the exact metes and bounds of the heafs may not be accurately defined, yet their locality is generally admitted.

There are, however, other cases where the persons entitled to rights of pasturage have no such exclusive interest in any

pendant or appurtenant, the tithes whereof would be chargeable on the tenements or hereditaments in respect of which such allotments may be made, and such tenements or hereditaments are not of themselves an adequate security for the rent-charge to be fixed in respect of such tithes; be it therefore declared and enacted, that in every such case the rent-charge to be fixed instead of such tithes shall be a charge upon and recoverable out of any allotments to be in future made in respect of such rights, as well as upon such tenements or hereditaments in respect of which such allotments are made, and by the same ways and means as are provided for the recovery of rent-charges by the said Acts, or any of them, or this Act.*

particular "heaf," and whose stock, in consequence, roam at large over all the open parts of the common.

In such cases the provisions of the Tithe Act, quoad the apportionment, are wholly inoperative, but the present enactment meets the difficulty.

It will be seen that the proviso has the effect of limiting the clause to cases where there has been an actual perception of the tithes of this open pasturage, or Lammas lands, during the seven years ending Christmas, 1835.

* In Cambridgeshire and other parts of the country, valuable commonable rights are appurtenant to tenements which are by themselves of very little worth.

The rent-charge, payable in respect of such commonable rights is necessarily fixed upon the tenement, the security of

Recited Acts extended to collegiate bodies, &c., notwithstanding restraining statutes.

15. And be it declared and enacted, that all the provisions in the recited Acts, or any of them, in any way relating to or enabling the pulling down or sale of barns and buildings generally used for housing tithes paid in kind, and the sale of the materials and the site thereof, either with or without any farm buildings or homesteads thereto belonging, and for the conveyance and delivery thereof, and for securing the consideration money for the benefit of the persons thereunto entitled, shall apply to and may be made available by any corporate body or person, whether as trustees or otherwise, by any master and fellows of any college, dean and chapter of any cathedral or collegiate church,

the titheowner, consisting in his power to take possession, including the right of common annexed, should any such necessity arise.

In the event, however, of such common being inclosed, subsequently to the apportionment of the rent-charge, many interested parties seem to think that the tithe-owner's security would be endangered, by reason of the rent-charge being fixed solely upon the tenement; and although the commissioners are of opinion that a person entitled to the tithes arising out of an estate is also entitled to the tithes of an allotment, in lieu of common, made in respect of such estate, in the same manner as he would have been entitled to the tithes arising out of the beneficial enjoyment of the right of common appurtenant to it; yet, with the view of removing such apprehensions, it has been thought prudent to declare the law upon this point. The clause has been so framed as to confine its effect to future cases.

master or guardian of any hospital, parson, vicar, or any other, having any spiritual or ecclesiastical living, being seised or possessed of any such barns or buildings or the site thereof, notwithstanding anything in a certain statute, made in the thirteenth year of the reign of Queen Elizabeth, for making void fraudulent deeds made by spiritual persons to defeat their successors of remedy for dilapidations, or in any other statute.*

13 Eliz. c. 10.

57 G. III. c. 99.

16. And be it declared and enacted, that so much of the said Acts or any of them as enables any owner of a particular estate in lands or tithes to charge so much of the expenses of commutation as is defrayed by him, or any part

6 & 7 W. IV. c. 71, § 77, extended to corporate and collegiate bodies.

* By reason of the words "having a limited estate or interest" in the buildings which tithe-owners are enabled to sell under the 87th section of the Tithe Act, considerable doubts are entertained whether the provisions of that section can be made available by ecclesiastical or eleemosynary corporations, such as deans and chapters, colleges, &c., whose estate or interest is not limited, but is, in contemplation of law, absolute and unqualified, although they are restrained from alienation.

There can be no doubt but that it was the intention of the legislature to confer the power of disposition in all cases where the buildings in question would be rendered useless by the process of commutation.

The purpose of the present clause, therefore, is to extend the provisions of the 87th section of the Tithe Act, to cases which were, unquestionably, meant to be within its intent and object, but which its particular wording would seem to exclude.

thereof, and the interest thereon, upon the lands whereof the tithes are commuted, or upon the rent-charge to be received by him instead of such tithes respectively, shall in like manner extend and be applicable to and may be made available by any corporate body or person, master or fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other, having any spiritual or other ecclesiastical living, and whether seised in fee or for a limited estate in such lands, tithes, or rent-charge, any thing in the said statute of Queen Elizabeth, or any other restraining statute, or in the tenure by which such lands, tithes, or rent-charge respectively are holden, to the contrary notwithstanding, but so nevertheless that the charge upon such lands or rent-charge respectively shall be lessened in every year following such commutation by one twentieth part, at least, of the whole original charge thereon.*

* The reasons for this clause are in a great measure similar to those which have been assigned for the preceding.

The use of the words "less in the whole than an immediate estate of fee simple or fee tail," inserted in the 77th section of the Tithe Act, would exclude from its operation ecclesiastical and other corporate bodies, &c., whose estate is in contemplation of law absolute.

Applications have been addressed to the commissioners on the

17. And be it enacted, that it shall be lawful for any ecclesiastical corporation aggregate, or any collegiate body, with the consent of the said commissioners, testified under their hands and seal, to charge, the amount of the expenses of commuting the tithes of any lands of which they are owners, or any part of such expenses, with interest thereon, on any other lands holden by them to the same uses or on the same trusts as the lands in respect of which such expenses were incurred, but so nevertheless that the charge upon such lands shall be lessened in every year following by one twentieth part at the least of the whole original charge thereon.* Colleges and Corporations aggregate may charge expenses on other lands than those in respect of which such expenses are incurred.

18. And be it enacted, that payment of the expenses of or incident to making any apportionment, or any other expenses which the said commissioners are authorized and may have ordered or may order to be paid by any owner of lands under and by virtue of the recited For recovery of expenses of apportionment.

subject, and, as there appeared no reason why the provisions of such 77th section might not be beneficially extended to the cases just referred to, it was thought advisable to insert the clause now under consideration.

* This clause was introduced on the suggestion of some of the collegiate bodies, who are enabled by it to facilitate their arrangements for meeting the expenses of the commutation. (See Introduction, p. xi., ante.)

Acts, or any of them, or this Act, may be enforced by the same ways and means as payment of rent-charge in arrear may be enforced under the provisions of the said Acts or either of them.*

Extension of 3 & 7 W. IV. c. 71, §§ 29, 62, for giving land in lieu of tithes.

19. And be it enacted, that so much of the said first-recited Act as enables any landowner, either by parochial agreement or individually, to give land instead of tithes or rent-charge at any time before the confirmation of any instrument of apportionment, shall be and the same is hereby extended, and the powers and provisions for that purpose may be exercised in every such case at any time, as well after as before such confirmation of the apportionment as aforesaid, during the continuance of the commission constituted, and with the consent of the commissioners appointed and acting under the said first-recited Act.†

* This power has been rendered necessary from the occurrence of cases where the remedy for recovery of expenses, under the Tithe Act, has been found inoperative, by reason of persons being absent from the kingdom, or from any fixed residence. The effect of the clause is to make the expenses a charge on the land, tenants having the power to recover of their landlord, 6 & 7 W. IV. c. 80, et seq.

† This clause has simply in view the extension of the period during which the 29th and 62d sections of the Tithe Act may be allowed to operate.

Those sections empower any landowners to give to an eccle-

Lands taken by ecclesiastical titheowners instead of tithes to vest absolutely in them.

20. And be it enacted, that in any case where any land shall have been or shall hereafter be taken by any ecclesiastical titheowner under any agreement for the commutation of any tithes, or for giving land instead of any rent-charge, under the recited Acts, or any of them, or this Act, such land shall upon the confirmation of such agreement vest absolutely in such titheowner and his successors, free from all claims of any person or body corporate,

siastical titheowner land to the extent of twenty acres, in exoneration of their estate from an equivalent portion of the rent-charge for which the tithes may have been commuted.

The power so conferred must, however, be exercised under the latter section, before the confirmation of the apportionment, whilst at the same time it enacts that any amendment of such apportionment shall be taken to annul the execution of any prior agreement for giving land, made in pursuance of the power which it confers.

The reasons and policy of that section are no less applicable after the confirmation of the apportionment than before; and as, by such confirmation, the amounts of rent-charge to be borne by the respective lands of the different owners are conclusively fixed, its provisions can be rendered available with more certainty and satisfaction after that event has taken place.

In practice, moreover, it has been found that the difficulty of getting the necessary parties in a position and disposition to agree to such exchange of land, and the limited time which elapses before the confirmation of the apportionment, has rendered the power of exchange all but inoperative.

The clause under consideration, therefore, advantageously extends the benefits, derived under the sections referred to, to the period during which the commission shall be in force.

and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same; and the commissioners shall cause to be inserted in or endorsed upon every such agreement the amount of the rent-charge instead of which such land was given, and the lands upon which the same was chargeable; and every person who, if this Act had not been made, would have been entitled to recover any such land given instead of rent-charge, or any rents or profits issuing out of such land, shall be entitled to recover against the party or parties giving such land instead of tithes or rent-charge, his, her, or their heirs, executors, or administrators, by way of damages, in an action on the case, such compensation as he or she may be entitled to for any loss thereby sustained; and such damages, and all costs and expenses awarded to the plaintiff in such action, shall forthwith attach upon and be payable out of the lands exonerated by such agreement.*

* The 30th section of the Tithe Act directs that in every case of land so given in exchange under the 29th section by parochial agreement, the commissioners shall satisfy themselves in such way, and by such evidence as they shall see fit, of the title of the land proposed to be given in exchange for tithes, thereby throwing upon them a responsibility, which is enhanced

21. And be it enacted, that all agreements and other assurances which shall be made for by the transaction requiring, as in the case of ordinary agreements, their official confirmation. Corporations, trustees, and feoffees to charitable uses may convey lands.

The 62d section, already adverted to, incorporates, in the cases of individual landowners, all the provisions and stipulations required by the 29th and 30th sections, in the case of lands given parochially, and thus the commissioners are in such cases equally bound to satisfy themselves on the subject of the title.

Under such circumstances the commissioners, although most anxious to avoid imposing unnecessary expense, have been advised that they must consider it an indispensable duty on their parts to require that a good holding title should be shown; and with this view, they have in every case called for an abstract of title, which they have submitted to counsel.

The counsel has of course on his part, where necessary, felt himself bound, before advising in favour of the title, to call for evidence to verify the abstract; and having regard to the occasionally limited interest of the parties, and the trifling value of the subject matter of the transaction, the apprehension of such expense has almost rendered the enactments inoperative.

The object of the clause now under consideration, is to supply a remedy, by conferring a title to the land by enactment, and thus to save the expense of investigation.

It is obviously of the utmost importance to insure the permanent possession of the lands to the titheowner, as in the great majority of cases, the view and purpose of its acquisition is to build upon it, and consequently, any subsequent eviction by prior title would produce irreparable evil.

As the persons ultimately establishing a title to the land will in all cases have the power of recovering compensation against the parties whose lands are exonerated from the rent-charge for which the exchange was made, no substantial injury can be effected to any one.

Analogous clauses, though somewhat varying in detail, are to be found in some of the Church Building Acts and Railway

the purpose of effecting the taking of land instead of rent-charge under the provisions of the said recited Acts, or any of them, or this Act, shall be valid and effectual for the purpose of vesting an estate of inheritance as to such lands in such ecclesiastical titheowner and his successors, notwithstanding the same be made by any corporation, sole, or aggregate, or any trustees or feoffees for charitable purposes, otherwise restrained from, or incapable of making any such valid conveyance or assurance.*

Apportionments may be confirmed though Commissioners not satisfied of accuracy of Maps, 1 Vict. c. 69, s. 1.

22. And be it enacted, that the provisions and conditions of the said secondly-recited Act, whereby the said commissioners are enabled to confirm any instrument of voluntary apportionment, although they shall not be satisfied of the accuracy of any map or plan annexed thereto, or that the several quantities of land specified in such apportionment or agreement are therein truly stated, shall extend to enable

Acts, as it is obviously necessary, where the land has been devoted to the purposes of such works, that the possession should not be disturbed.

* This clause enables corporations or charity trustees to give land in exchange for tithes or rent-charge. Cases have occurred where such an arrangement was found desirable, but could not be carried into effect, by reason of restraints in the Charter or Statute of Incorporation.

the commissioners, if they shall think fit, to confirm any compulsory apportionments to which any existing map or plan, agreed to be adopted at a parochial meeting, shall be annexed, although the said commissioners shall not be satisfied of the accuracy of such map or plan, or that the several quantities of land specified in such apportionment are truly stated in such map or plan.*

* The 1st section of the 1 Vict. c. 69, enables the commissioners, in cases of voluntary apportionments, to dispense with sealed maps and detailed statements of the quantities of land where any map has been agreed to be adopted by a parochial meeting. This clause extends the provision in question to compulsory apportionments, in the case of any *existing* map so agreed to be adopted by a parochial meeting.

The reasons for this section and its intention and effect, will be fully collected on a perusal of the Report of the Committee of the House of Commons, appointed to enquire into the surveys, and upon which report, the amendment act, 1 Vict. c. 69, § 1, was based. That alteration, however, of the original Tithe Act was confined to cases of voluntary apportionment, and hence could not be made available in compulsory cases.

Suppose, therefore, a parish to have a recent survey, of the general accuracy of which there may be no reason to doubt; should it happen that such survey is not on the particular scale of three or four chains to an inch, or has not upon it the lines of construction which will allow of its being submitted to the process of testing, it could not be received and sealed by the commissioners, and the parties would thus be driven to the cost of an entirely new map upon the most expensive principles. To obviate this difficulty, the provision of the Tithe Amendment Act has by this clause been extended to compulsory cases.

Expenses of apportionment to be borne in certain cases as commissioners may direct, (6 & 7 W. IV. c. 71, §§ 12, 74, 75.)

23. And whereas, in and by the said first-recited Act, the words "landowner" or "titheowner," or "owner of lands" or "owner of tithes," are defined to mean and include every person who shall be in the actual possession or receipt of the rents or profits of any lands or tithes, except (amongst other exceptions) any tenant for life or lives, or for years, holding under a lease or agreement for a lease, on which a rent of not less than two thirds of the clear yearly value of the premises therein shall have been reserved, and that without regard to the real amount of interest of such person; and in every case in which any tithes or lands shall have been leased or agreed to be leased, to any person for life or lives, or for years, by any lease or agreement for a lease, on which a rent less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, the person in receipt of such rent shall, jointly with the person liable to the payment thereof, be deemed for the purposes of the said Act to be the owner of such tithes or lands: And whereas certain allowances and expenses to surveyors and tithe-valuers necessary for making any award, and all other expenses of or incident to making an award, are, by the said recited Acts or some of

them, directed to be paid by the landowners and titheowners interested in the said award, in such proportion, time, and manner as the commissioners or assistant-commissioners shall direct; and the expenses of or incident to making any apportionment are by the said first-recited Act to be paid by owners of lands in rateable proportions to the sums charged on the said lands in lieu of tithes by such apportionment: And whereas, cases have occurred and may occur, where, by reason of the rent reserved in certain leases or agreements for leases, not being less than two thirds of the clear yearly value of the premises thereby demised or agreed to be demised at the date or time of coming into operation of such leases or agreements, but which premises are at the time of putting in force the provisions of the said recited Acts of improved yearly value, so that the rent originally reserved or agreed for is less than two thirds thereof, but by the operation of the said recited words, as defined in the said first-recited Act as aforesaid, such expenses, or a part thereof, would, under the said Acts, be chargeable on the original lessor or original lessee, and not on the intermediate or sub-lessors or lessees whose beneficial interest in the said lands and tithes, or rent-charge in lieu of tithes, is proposed to be or has been

dealt with under the said recited Acts, or some or one of them, or this Act: And whereas, certain other cases have occurred and may occur, in which it is expedient that the commissioners should be empowered to vary and fix the proportion of the expenses of apportionment, including therein the expenses of or incident to the map or plan annexed thereto, and the copies thereof, between the owners of the lands affected thereby, as such owners are defined in the said first-recited Act as aforesaid, and according to such principles as to the said commissioners shall seem just and equitable: be it therefore declared and enacted, that, notwithstanding anything in the said Acts or any of them contained, it shall be lawful for the commissioners, in such cases as they may deem it just and equitable, to order and direct that such expenses of or incident to any award, or any part thereof, shall be borne and paid in such proportion and manner, by and amongst the persons interested in the lands, tithes, or rent-charge respectively dealt with in such award, and that such expenses of or incident to any apportionment, or any part thereof, shall be borne and paid by and amongst the persons interested in the lands in such proportions and manner respectively as the said commissioners shall direct; and such expenses, and every or any part thereof, shall

in every such case be recoverable in like manner as expenses, or the share thereof to be borne by any person, are or is recoverable under the provisions of the said first-recited Act or this Act.*

* The objects which this clause has in view will, in a great measure, be collected from its recitals, whilst they will be found to be fully illustrated by the following cases.

When lands or tithes have been leased for any term, exceeding fourteen years from the commencement, the lessor and lessee are, by the 6 and 7 W. IV. c. 71, § 12, joint owners, provided a rent of less than two thirds of the clear yearly value of the premises comprised in such lease shall have been reserved by it.

This rent, as the commissioners are advised, must be computed at the time the lease was granted, and must have been less than two thirds at that period. Hence, in most cases of leases of long standing and for long terms, although the rent may not have been less than two thirds at the period of the demise, yet, in consequence of the improved condition of the premises, it has since become in all considerably, in a very great number infinitely, less.

The rent, however, being thus computed at the time the leases were granted, the lessees, in such instances, would not be owners within the Act. But as the 74th and 75th sections of the 6 and 7 W. IV. c. 71, respectively enact that the expenses of making an award shall be borne by the landowners and titheowners interested therein, as the commissioners shall direct, and that the expenses of the apportionment shall be borne rateably among the landowners, the lessees, as has just been shown, not being owners, cannot be made to contribute to any portion of these expenses; and thus the lessor, receiving only a small rent, and deriving no immediate benefit from the commutation (for the Tithe Act does not interfere with existing contracts during their currency), is saddled with the whole burden of the expenses.

The first object, therefore, of this clause is to correct such

Award may be made of rent-charge to certain owners of tithes by general description, (6 & 7 W. IV. c. 71, §§ 12, 21, 50.)

24 And whereas, in certain cases of compulsory award where tithes are held by one tithe-owner in different rights, or where by reason of owners of land having purchased or otherwise acquired such a beneficial interest in the same, for life or lives, or for years, as under the said provisions of the said first-recited Act requires, that such persons respectively should be dealt with and distinguished in such award as joint

an anomaly and injustice, by enabling the commissioners to assess the expenses among the different interests as to them shall seem just and equitable.

The second object which the clause has in view is most forcibly illustrated in another case which has occurred.

The 75th section of the Tithe Act directs the expenses of the apportionment to be paid by the landowners in rateable proportion to the sums charged upon their lands in lieu of tithes by such apportionment.

In the case of a particular parish containing 2000 acres of land, the great tithes of 1700 acres were commuted under an Enclosure Act, leaving 300 acres only liable to the payment of great tithes. The whole of the small tithes of the parish were covered by a very small modus.

Then applying the 75th section, as the expenses of the apportionment, of which the map forms a constituent part, are to be borne in rateable proportion to the sums charged upon the lands under it, the owners of the 1700 acres, being charged with little or nothing, would have little or nothing to pay, and thus the owners of the 300 acres charged with the corn tithe would have to bear the whole burden of the cost of mapping the lands of all the other proprietors of the parish.

It is true that the commissioners might refuse in such case to certify under the 76th section, but the mapper would probably resort to another tribunal for the recovery of his debt, and then the words of the Act must prevail.

owners with the lessor of or the person having the reversionary interest in such tithes; but great difficulties have arisen in distinguishing the sums payable to each such titheowner, as also in distinguishing the respective lands out of which the tithes accruing to any such titheowner, either as holding such tithes in different rights or as joint titheowners, arise, or whereon any several rent-charge should be awarded, and the completion of such award has been thereby impeded; be it therefore declared and enacted, that in any such case it shall not be necessary, in any such award, to distinguish the lands, or award a several rent-charge to each such owner of the tithes by name, or otherwise to distinguish such titheowner, but it shall be sufficient to award a gross rent-charge to such owner of tithes in different rights in respect of such tithes so held by him, or (as the case may be) to the original lessor of such tithes, or the person in whom the ultimate reversion thereof shall be, by his proper name and description, and in any such case of joint ownership to the several persons claiming under him, and being so respectively joint owners of such tithes, by such general terms and description as to the commissioners or assistant-commissioner making such award shall seem fit: provided always, that the name of each such titheowner, and

the lands out of which his respective tithes, or the portion of such gross rent-charge instead of such tithes, shall respectively accrue or issue, shall be distinguished in the instrument of apportionment made in pursuance of such award; and every such titheowner shall be as fully entitled to take, hold, and recover such portion of the rent-charge as shall be so apportioned in such instrument of apportionment, upon the several lands, the tithes or rent-charge whereof are so held by him respectively, according to his respective term and interest in such tithes or the rent-charge, in as ample a manner as if such titheowner and lands had been respectively named and distinguished in such award under the provisions of the said first-recited Act.*

* The necessity for this clause has been felt in several instances, each of which belongs to a numerous class of cases.

In a parish in the West of England, the tithes are payable to five prebendaries, which are now all united in the person of one rector.

The aggregate composition, which forms the basis of the rent-charge, is easily to be ascertained, but the boundaries of the prebends are difficult to define without a map, and the composition paid by each cannot be distinguished, consequently the rent-charge for each prebend can be only ascertained by a general valuation.

The apportionment would hereafter determine, as well the sums payable to each titheowner as the sums payable from each landowner. To do this in the first instance would occasion double trouble and expense.

In another parish, a dean and chapter are the owners of a

Commissioners may adjourn meeting without attending to adjourn.

25. And be it enacted, that it shall be lawful for the said commissioners to adjourn any meeting by notice in writing under their hands or the hands of any two of them, to be affixed and published in manner provided for notices in the said first-recited Act, without any commissioner or assistant-commissioner giving attendance for the purpose of making such adjournment.*

portion of lands, and the tithes arising out of such lands. They have leased the tithes and lands together, and their lessees have relet the lands and tithes to many sub-lessees. The dean and chapter are quite willing to agree on the gross rent-charge payable to themselves, and to their lessees or sub-lessees, leaving the respective interests to be determined by the apportionment, but the Act requires that the award shall set forth the amount payable to each, which can only be equitably done by a previous valuation, and also by an examination of the leases in order to ascertain the rights of each.

The commissioners have already made the following order in reference to this provision: "Ordered, that if any assistant-commissioner shall find it expedient in an award to assign only one rent-charge to a person or persons holding parcels of tithe under different tithes, he shall previously to doing so, make a report of the circumstances of the case to this board, and wait for an especial permission before he proceed further."

* It is the practice of the assistant-commissioners, when the business is not finally completed at the meetings at which they attend, to nominate another day for its resumption; but events often occur which render a postponement of the day so fixed upon absolutely essential, and in such, and similar cases, doubts have been entertained, whether it is not requisite that the assistant should *personally* attend, and make a formal adjournment of the meeting.

This clause has been introduced to remove such doubts and to obviate the expense and inconvenience of an unnecessary attendance.

Provision for dividing tithe of fruit plantations in certain cases.

26. And be it enacted, that in case any of the lands in a parish, the tithes whereof shall be in course of commutation under the provisions of the first-recited Act, shall be orchards or fruit plantations, and notice in writing, under the hands of any of the owners thereof, whose interest therein shall not be less than two thirds of the whole of the orchards and fruit plantations in such parish, shall be given to the valuers or commissioners or assistant-commissioner by whom any apportionment provided for by the said Act shall be made at any time before the draught of such apportionment shall be framed, that the tithes thereof should be distinguished into two parts, the amount which shall be charged by any such apportionment upon the several orchards and fruit plantations in such parish shall be distinguished into two parts accordingly, and the same shall be called the Ordinary Charge and the Extraordinary Fruit Charge; and the extraordinary charge shall be a rate per imperial acre, and so in proportion for less quantities of ground, according to the discretion of the valuers or commissioners or assistant-commissioner by whom such apportionment shall be made as aforesaid.*

* Clauses 26 to 33 have been framed by parties interested in hop and fruit plantations in Kent and Sussex, and have been introduced at their request.

Newly-cultivated fruit plantations to be charged an additional sum

27. And be it enacted, that all lands, the tithes whereof shall have been commuted under the said Act, which shall be situate within the limits of any parish in which an extraordinary fruit-charge shall have been distinguished, as aforesaid, at the time of commutation, and which shall be newly cultivated as orchards or fruit plantations at any time after such commutation, shall be charged with an additional amount of rent-charge per imperial acre, equal to the extraordinary fruit charge per acre in that parish: Provided always, that no such additional amount shall be charged in respect of any plantation of apples, pears, plums, cherries and filberts, or of any one or more of those fruits, during the first five years, and half only of such additional amount during each of the next succeeding five years, of such new cultivation thereof; and that no such additional amount shall be charged in respect of any plantation of gooseberries, currants, and raspberries, or of any one or more of those fruits, during the first two years, and half only of such additional amount during each of the next succeeding two years, of such new cultivation thereof; and that no such additional amount shall be charged in respect of any mixed plantation of apples, pears, plums, cherries or filberts, and of gooseberries,

currants or raspberries, during the first three years, and half only of such additional amount during each of the next succeeding three years of such new cultivation thereof.

Fruit plantations when displanted to be relieved from additional charge.

28. And be it enacted, that all lands, the tithes whereof shall have been commuted as aforesaid, which shall be situated within the limits of any parish in which an extraordinary fruit charge shall have been distinguished as aforesaid, and which shall cease to be cultivated as orchards or fruit plantations at any time after such commutation, shall be charged, after the thirty-first day of December next following such change of cultivation, only with the ordinary charge upon such lands.

Provision for mixed plantations of hops and fruit.

29. Provided also, and be it enacted, that in case any lands within the limits of a parish in which an extraordinary fruit charge shall have been distinguished as aforesaid, shall have been or shall at any time be planted with fruit, and also with hops, the same shall, during the continuance of such mixed plantation of hops and fruit, be liable to the extraordinary hop charge only, or to the extraordinary fruit charge only, payable in respect of the same lands, and not to both those charges; and that the extra-

ordinary charge to which the lands so planted shall be liable shall be the higher of the two for the time being.

When land subject to rectorial and vicarial tithe, acreable rent-charge to be fixed.

30. And be it enacted, that where any land liable to any such extraordinary charge for the tithes of a mixed plantation of hops and fruit, shall at the time of the commutation produce both rectorial and vicarial tithes payable to different persons, the apportionment shall set out the same, distinguishing the amount of ordinary and extraordinary charge payable to each titheowner, and shall divide the whole acreable extraordinary charge between such titheowners, according to the quantity of land producing rectorial tithe, and the quantity producing vicarial tithe.

Provision for future mixed plantations.

31. And be it enacted, that in all cases in which there shall be hereafter mixed plantations of hops and of such fruit as aforesaid, in any parish or district in which an extraordinary fruit charge shall have been declared, the rectorial and vicarial tithes whereof, but for the commutation, would have been payable to different owners, the extraordinary charge payable in respect of the tithes of such mixed plantation shall be divided between such owners in proportion to the extent of land occupied

by that produce which would have paid tithe to each of them respectively: provided always, that payment of the share of each titheowner, when so ascertained, shall be taken to be subject to the provisions contained in the said first-recited Act, and in this Act, for lessening the amount of extraordinary charge payable in respect of hop-gardens and orchards respectively at the beginning of such cultivation.

How the rent-charge for hops and fruit may be fixed in certain cases.

32. And be it enacted, that, for the purpose of fixing any charge for the tithes of hops or fruit, or of any mixed plantation, as aforesaid, the commissioners may, if they see fit, assign the parish or land, in respect of which due notice shall have been given, requiring the tithes thereof to be separately valued, as required by the first-recited Act, or any part or parts of such parish or land as a district under the provisions of the said Act, and may fix a charge upon such lands in respect of the tithes of hops or fruit as the rent-charge to prevail and to be established in respect of the same, without specific reference in the award to any other parish or land; but having regard, nevertheless, to the general amount of composition which they shall find to have prevailed in other parishes of a similar description, and not to the money payments in the parish under conside-

ration, or the value of the tithes in kind therein.*

Provision for giving effect to parochial agreements and proceedings thereon in certain cases of extraordinary charge.

33. And be it enacted and declared, that the provisions of the said first-recited Acts for distinguishing rent-charges apportioned upon lands cultivated as hop-ground into two parts, and for relieving lands from and subjecting the same to an extraordinary charge when ceased to be cultivated and when newly cultivated as such respectively, shall be held to extend to parochial agreements, already or hereafter

* The pressure of hop-tithe, if taken in kind, was indefinitely greater in degree than that of any other tithe. In a great majority of cases the titheowners having had regard to this circumstance, made moderate compositions. In a small number of cases they had disregarded it, and taken tithe in kind, or very high compositions, and the object of the original Tithe Bill was to make the more moderate view general, and to perpetuate it by grounding the rent-charges on the *average* of the compositions putting all cases of tithe in kind out of calculation.

The object of the present clause is to effect the same purpose, but in a slightly different manner. It was easy in practice to find a set of parishes of which the average compositions forming the guide to the rent-charge were moderate, but difficult, indeed all but impracticable, to find districts in which one uniform rent-charge would be fair.

The present clause, steering as clear of the class of cases of such tithe taken in kind, as of the influence of unusual compositions, enables the commissioners to settle each parish, with some regard to its individual peculiarities, whether as to position or productive powers.

made, and to the proceedings consequent thereupon, and to the lands discharged from tithes by virtue thereof, and that every such agreement and proceeding whereby any district has been or shall be assigned for establishing or distinguishing into two parts any rent-charge in respect of lands cultivated as aforesaid, shall be deemed valid, operative, and effectual, for all the purposes of the said recited Acts and of this Act, and that every district assigned by virtue thereof shall be deemed a district duly assigned, and every rent-charge created thereby a valid rent-charge for the like purposes.

For the settlements of disputes as to boundaries.

34. And be it enacted, that in case there shall be any question between any parishes or townships, or between any two or more landowners touching the boundaries of such parishes or townships, or the lands of such landowners respectively; or if such parishes or townships or landowners shall be desirous of having such boundaries ascertained, or a new boundary line defined, it shall be lawful for the said commissioners, or any assistant-commissioner, on the application in writing of a majority of not less than two thirds in number and value of the landowners of such parishes or townships in the case of parochial or township boundaries, or on the like application of

such two or more landowners in the case of boundaries between their lands, to deal with any dispute or question concerning such boundaries, and to ascertain, adjust, set out, and define, the ancient boundaries between such parishes or townships, or the lands of such landowners respectively, or draw and define a new line of boundary as they may see fit; and in every such case the powers and provisions of the said recited Acts and of this Act, so far as the same may in the judgment of the commissioners or assistant-commissioner respectively be applicable, shall extend and may be applied by them or him to such question, and the boundary line so ascertained or newly-defined by the said commissioners or assistant-commissioner, shall thenceforward be the boundary line of and between such parishes, townships, or lands, of such landowners respectively for all purposes whatsoever. Provided always, that nothing in this provision contained shall extend to any boundary or part of a boundary, being also the boundary line or part of the boundary line of any county, or to the boundary line of any copyhold or customary land, unless the consent in writing of the lord of the manor whereof such land is holden to such application being dealt with by the said commissioners or

assistant-commissioner shall have been first sent to them or him for such purpose. Provided also, that every such boundary line shall be duly set out and delineated on the map annexed to the schedule of apportionment or upon a separate plan to be attached thereto, with proper descriptions and references, showing in what respects such map so annexed to the apportionment is varied, and in what respects the several closes whereon any rent-charge is fixed, are affected thereby, and such map shall in any such case be deemed to be varied by such plan, and be as valid for all purposes as if the same had been originally drawn and sealed or certified by the said commissioners with such variations.*

How questions of boundary removed before Queen's Bench are to be dealt with.

35. And be it enacted, that in every case in which any judgment or determination of the commissioners or of any assistant-commissioner

* The 2d clause of the Tithe Amendment Act, 1 Vict. c. 69, enables two thirds of the landowners of any parish, of which the tithes are about to be commuted, and when the boundaries are in dispute, to call on the commissioners to determine them. The power is, however, incomplete, where the actual boundary cannot be ascertained, and the parties are desirous of defining a new boundary. This clause has been introduced to meet the difficulty; and as the power is likely to be highly useful, it is given without the limit of a commutation being about to take place.

respecting the boundary of any parish, district, or lands, shall have been or shall be removed into the Court of Queen's Bench, it shall be lawful for the Court to direct the trial of one or more feigned issues upon such points as the Court shall think fit, and also to direct who shall be the plaintiff or plaintiffs, and who shall be the defendant or defendants on such trial, or determine the same in a summary manner, or otherwise to dispose of the question or questions in dispute, and to make such other rules and orders therein as to costs and all other matters, as may appear to be just and reasonable.*

Commissioners may award costs of enquiry into boundaries.

36. And be it enacted, that it shall be lawful for the said commissioners, and for such assistant-commissioner as aforesaid, to order and direct that all reasonable costs, charges, and expenses already or hereafter to be incurred by any parties interested in or about any enquiry into any boundary which the said commissioners or such assistant commissioner are or is authorised to settle, shall be borne and paid in such

* The third clause of the amendment act gives an appeal to the Court of Queen's Bench, but omits to point out how such a case should be dealt with. This clause gives the Court full discretion to dispose of any such case as it may see fit.

proportion and manner by and amongst the several other parties interested therein (as well those who shall have signed a request to the tithe commissioners, that the said commissioners should enquire into and settle such boundaries, as every other person interested, who shall, either personally or by his or her counsel, attorney, or agent, appear upon such enquiry before the said commissioners, or before such assistant-commissioner), as the said commissioners or any such assistant-commissioner shall direct; and such costs, charges and expenses, and every part thereof, shall, in every such case, be recoverable in the like manner as expenses, or the share thereof to be borne by any person, are or is recoverable by the recited Acts or this Act.*

This Act to be taken as part of recited Acts.

37. And be it enacted, that this Act shall be taken to be a part of the first-recited Act for

* This clause gives the Court powers to award and apportion the costs of fixing a disputed boundary among the parties interested. In the case of parish boundaries, parish officers should take care to ascertain out of what fund their proportion of expenses should be paid. It is clear that if a boundary question arise incidentally from an appeal respecting the poor-rate, or a settlement case, and the like, that fund would be liable. But it does not seem to be so, when the question is independent of any such incident. The only safe way, therefore, is to ascertain this before entering into any voluntary arrangement for putting the provisions of this clause in action.

the commutation of tithes in England and Wales, and of the secondly-recited Act for amending the same, and of the said thirdly-recited Act to facilitate the merger of tithes; and that in the construction of this Act, unless there be something in the subject or context repugnant to such construction, the several words used in this Act shall have and bear the same interpretation as is given to such words respectively in the said recited Acts, or either of them; and whenever a word importing the singular number or masculine gender only is used, the same shall be understood to include, and shall be applied to, several persons or parties as well as one person or party, and females as well as males, and several matters or things as one matter or thing respectively, and the converse.*

Act may be amended or repealed.

38. And be it enacted, that this Act may be amended or repealed by any Act passed in this session of parliament.

* See the interpretation clauses, 6 and 7 W. IV, c. 71, §§ 12 to 16.; 1 Vict. c. 69, § 14; 1 and 2 Vict. c. 64, § 5, and the Acts themselves, passim, with such alterations and extensions as are provided in the present Act.

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3 Vict. c. 15.

AN ACT

FURTHER TO EXPLAIN AND AMEND

THE ACTS

FOR THE

COMMUTATION OF TITHES

IN

ENGLAND AND WALES;

WITH

AN INTRODUCTION, NOTES, AND INDEX.

BY

JOHN MEADOWS WHITE, ESQ.

SOLICITOR TO THE TITHE COMMISSIONERS FOR ENGLAND AND WALES.

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3 Vict. c. 15.

AN ACT FURTHER TO EXPLAIN AND AMEND THE ACTS FOR THE COMMUTATION OF TITHES IN ENGLAND AND WALES.

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3 Vict. c. 15.

INTRODUCTION AND ANALYSIS.

In their Annual Report, dated 1st January, 1840, the Tithe Commissioners state that "the "hardship of allowing tithe in kind to be col- "lected, after a rent-charge has been actually de- "clared, has been strongly pressed on us. If, "however, a power should be vested in us of ex- "tinguishing tithe before the confirmation of the "apportionment, such a power must obviously be "accompanied by others which would secure the "receipt by the titheowner of an unapportioned "rent-charge." And in reference to the hop clauses, they suggest, "it has appeared to us "that a slight further simplification of these "clauses might be practically useful. We do not "think fresh legislation necessary or advisable "for this object alone; but should an opportunity "occur, we think it may be worth the attention "of the legislature."

Accordingly, on Sir E. Knatchbull giving notice of bringing in a bill, having for its object the enabling landowners and occupiers to pro-

cure a discharge of their lands from the liability to tithes, immediately after the confirmation of an award or parochial agreement, the opportunity was taken by the Commissioners to engraft on it such provisions as were most called for; those relating to the extinction of tithes after the declaration of the rent-charge, being carried out in the first ten clauses of the Act. Many of these provisions were brought forward when the Act of last Session (2 & 3 Vict. c. 62,) was under discussion; but they were not then enacted, for reasons which, through change of circumstances, no longer prevail. Other provisions were also introduced on the suggestion of several members of either House of Parliament, the Act having in both Houses been referred to the consideration of a select committee. In the House of Commons the second reading of the Bill was objected to, on the ground that three Acts had already been passed,* extending the principle and provisions of the original Act, (6 & 7 W. IV. c. 71;) and it was urged that amendment Acts only tended to confuse and obstruct the working of the principal measure. But the reasons given by the Commissioners for acceding to Sir E. Knatchbull's Bill, and in support of the provisions added to it by themselves, so clearly showed that, in a vast and com-

* 1 Vict. c. 69, § 11. 1 & 2 Vict. c. 64. 2 & 3 Vict. c. 62.

plicated question such as that of the general Commutation of Tithes, it would be impossible to carry out the intention of the legislature if measures were not passed from time to time to aid the working of the original measure, and bring within its scope cases which were exceptions to the general class, or which were not sufficiently prominent to be provided for at first, that after the second reading no division took place on the Bill, and its enactments were extended to their present number. The reasons of the Commissioners I have had their permission to embody in the notes to this edition of the Act. Its provisions will range themselves under the following heads:

CLAUSES I.—X.

PROVISIONS ENABLING LANDOWNERS AND OCCUPIERS TO DISCHARGE THEIR LANDS FROM LIABILITY TO TITHES.

By the 6 & 7 W. IV. c. 71, § 50, the draft of every award is to declare the total amount of rent-charge to be payable instead of the tithes of the parish to which it relates; and by § 52 the award is made complete on its confirmation by the Commissioners. And in like manner by § 27, every parochial agreement for a rent-charge finally fixes its amount on the agreement being confirmed by them. But in both cases a long interval generally elapses before the rent-charge,

thus ascertained and fixed, can be apportioned upon the several lands out of which it is to be payable. During this interval the liability to the render of tithes in kind, or to the payment of compositions, continues, and great inconvenience and discontent are often occasioned by the fact of this render or payment varying in amount from the affixed rent-charge, and by all the annoyances attendant upon the old system of taking tithes being continued, notwithstanding that the payment, which is thought fairly to meet the interests of both titheowner and landowner, has been so fixed.

To obviate this, Clause 1 enables the Commissioners—after a rent-charge for any parish has been fixed, by any confirmed agreement or award, at any time before the confirmation of the apportionment, by a declaration under their hands and seal of office, upon the application in writing of any landowner or occupier, and upon such security being given for the due payment of such rent-charge to the parties entitled to it—to declare the lands discharged from liability to the tithes or composition from such day as shall be fixed in the declaration—and the rent-charge is to be payable half-yearly from such day. This payment, in any case when there is a composition, is to commence from the day on which it expires—in every other case from the 1st of January, 1st April, 1st July, or

1st October, either before or after the day fixed in the agreement or award for the commencement of the rent-charge.* A provision is added for taking accounts between the parties, where any render or payment has been made between the day of discharge and the first day of payment of rent-charge under the declaration.

Clause 2 exempts certain leases from the operation of the Act.

Clause 3 requires the Commissioners within ten days after the receipt of any such application to give notice to the titheowner, and also to publish notice of the declaration twice within twenty-one days from its date; and after the expiration of this period, all the provisions applicable to a rent-charge, payable under a confirmed apportionment, are to be applicable to the rent-charge payable under the declaration.

Clause 4 enables the owner of any land so discharged under this act to take upon himself the payment of such proportion of the rent-charge as the valuers, appointed to make the appointment, shall consider will probably be

* In cases where the tithes are partly taken in kind and partly under composition, the Commissioners in their declaration direct that the lands shall be discharged from tithes, as to those taken in kind, from the day fixed by them; but as to those where the tithes are under composition, from the day of its determination.

payable under it, in respect of such lands. The valuers are required to give a certificate of this amount, and on the landowner serving a copy of the certificate on his tenant, subscribed with an undertaking to pay such amount in exoneration, *pro tanto*, of the rent-charge payable under the security taken by the Commissioners, the tenant becomes bound to pay such estimated amount in the nature of additional rent, provision being made for the Commissioners taking an account between such landowner and tenant of the difference between any such payment and the actual amount of rent-charge as finally ascertained in the confirmation of the apportionment. If the payment made by such tenant shall be certified by the Commissioners to exceed his true proportion of rent-charge, he may deduct the difference from his rent. If it fall short it may be distrained for, or after the expiration of the tenancy recovered as a debt.

Clause 5 provides that the certificate of the Commissioners in such case, or an office copy of it, shall be sufficient evidence of the right to recover the amount certified to be due.

Clause 6 gives a similar power to certain occupiers of lands so discharged of tithes, where the landlord remains liable to the tithes or rent-charge, to give a like notice of their intention to pay the proportion of rent-charge due in respect of such lands. And if the landlord do

not within twenty-one days after the receipt of such notice undertake the payment, the tenant may pay such proportion and deduct the amount from the future payments of his rent.

Clauses 7 and 8 contain provisions for a summary taking of accounts, upon a judge's order, between the parties entitled to the rent-charge and the parties paying the amount under the security or in aid of it, in case any half-yearly payment shall be in arrear for twenty-one days. But no security under this Act is to be available for more than two years from its date, the Commissioners having power to enlarge its operation for a further period of twelve months.

Clause 9 gives the parties entitled to the rent-charge a remedy by distress for arrears, if the security prove insufficient.

Clause 10 exempts the security from stamp duty.

CLAUSES XI.—XIII.

EXTENSION OF POWERS TO FIX PAYMENT FOR PERIOD INTERVENING BETWEEN THE DETERMINATION OF COMPOSITION AND THE COMMENCEMENT OF RENT-CHARGE, AND TO FIX PERIOD OF SUCH COMMENCEMENT.

Clause 11 extends that part of 2 and 3 Vict. c. 62, § 10, which relates to the fixing a sum for any period intervening between the deter-

mination of a previous agreement or composition for tithes and the time at which the rent-charge shall commence, by enabling the Commissioners to fix such amount by a supplemental award after an award, their power being confined by the clause above cited to cases of award, or supplementary award after agreement.

Clause 12 provides that in all cases where the amount to be paid for this intervening period is to be fixed, the particulars here enumerated shall be inserted in the apportionment, and in default of such insertion the amount agreed for is to be paid in the proportions fixed by the apportionment. The object of this clause is to provide for cases where parties have agreed for the gross amount, but omitted to provide for its distribution among the several landowners liable to its payment.

Clause 13 extends that part of the 2 & 3 Vict. c. 62, § 10, which relates to the power of fixing the period at which the payment of the rent-charge shall commence, to supplemental awards, as well after an award as an agreement, the original power being confined to awards or to agreements after awards; provision being made for deducting the value of any tithe rendered, or composition paid, between the period thus fixed and the first payment of the rent-charge, when such period commences on a day preceding the date of the award.

CLAUSES XIV.—XVI.

CONTINGENT RENT-CHARGES—LAMMAS AND COMMON LANDS.

By Clause 14 the powers of 2 & 3 Vict. c. 62, § 11, enabling parties to substitute a fixed rent-charge instead of a contingent rent-charge, in cases of lands formerly held of a privileged order, are extended to other cases of partial exemptions—and those powers may be exercised by the commissioners with the consent of the titheowners, and landowners, or by these parties themselves, by a parochial or supplemental agreement. A proviso is added, exempting from the operation of the clause, cases of change of cultivation and of prescription for woodland.

Clause 15 provides that the 2 & 3 Vict. c. 62, § 13, relating to Lammas and Common lands, may be carried into effect by a supplemental agreement after an award, or by supplemental award after a parochial agreement.

Clause 16 provides that where the Commissioners intend to fix the period of commencement of rent-charge by supplemental award after an agreement, or to exercise the power relating to lammas and common lands, they shall give the like notice as in the case of an award. And if, pending the period during which the notice is taking effect, the parties

give notice of their desire that the matters specified in the notice shall not be proceeded with, the Commissioners are to refrain from proceeding; a provision similar to that contained in the 36th clause of the original Act, which enables parties to proceed by agreement after notice of the Commissioners' intention to make a compulsory award.

CLAUSE XVII.

PARISH PROPERTY.

Clause 17 extends the 2 & 3 Vict. c. 62, § 21, which provides for the due vesting of an estate of inheritance in land given by way of commutation by corporations and trustees for charitable purposes, to cases where such lands are given by parish officers or trustees.

CLAUSES XVIII. XIX.

HOP CLAUSES.

Clause 18 enables the parties or the commissioners to declare the amount per acre of the extraordinary rent-charge to be payable for hop-grounds or market-gardens in any parish or district; and in that case the ordinary rent-charge in such parish will be declared for all the lands in it subject to the addition of the extraordinary charge per acre when cultivated with hops or as market-gardens. And by

Clause 19 it is declared that it shall not be necessary to distinguish in the apportionment the amount of extraordinary charge fixed on the lands of each owner.

CLAUSES XX. XXI.

REGULATION OF AVERAGES—INSTRUMENT OF APPORTIONMENT.

Some doubt having existed whether the payments of the rent-charge are governed by the averages declared in the month of January at the commencement of the year during which such payments are made, Clause 20 was introduced declaring such to be the case.

Clause 21 requires that, unless a majority in value of the landowners direct otherwise, the apportionment shall distinguish the proportion of rent-charge fixed on each close, and that each close shall be laid down in the map annexed to the apportionment; cases in which valuers have been already appointed are excepted.

CLAUSES XXII. XXIII.

RECOVERY OF EXPENSES.

It has been found in practice that where the costs of commutation have been a charge on the land, and hence strictly payable by the lessor, great hardship had been occasioned where les-

sors resident out of the kingdom have refused to pay, and the valuers have therefore been in danger of losing what is due to them. Or where, as in some cases, the power of distress on the land given by way of remedy for recovery of expenses has been put in force against the lessee, he has been without redress against his lessor, especially in cases where a small ground-rent, or renewal fines alone were payable. Clause 22 provides a remedy for this by enabling lessees to deduct the amount and interest from any rent or renewal fines payable by them to their lessors, power being reserved to the latter to charge the amount on the lands where their own estate is less than one of inheritance.

Clause 23 provides a remedy where the powers of charging expenses on land or rent-charge are inadequate to meet the exigency of the case. Thus ecclesiastical bodies, as included in the definition of the word 'person,' had the power to charge the expenses of commuting the tithes of *land* belonging to such 'person.' This did not extend to the expenses attending the commutation of *tithes* of which such person was owner; and the present clause supplies the omission, and also, as in the 22d clause, extends the power of charging to redeemed land-tax and renewal fines in certain cases.

CLAUSE XXIV.

PRODUCTION AND DISCOVERY OF DEEDS.

The power in the original Act to call for production of deeds did not extend to title-deeds; but in the 46th clause, where an appeal is given to the Superior Courts a Judge at chambers is authorized to order the production of all deeds relating to the questions between the parties without any exception, and without even giving a discretion to the Judge to allow of any deed not strictly affecting the commutation being withheld. The 24th clause puts the power both of the Judge and the Commissioners on the footing of a bill of discovery, and vests in the Judge the discretion of granting or refusing the order for production, powers being given to order copies to be furnished at the expense of the parties requiring them. The right to withhold deeds or parts of deeds sworn to relate only to title is reserved.

CLAUSES XXV.—XXVII.

EXEMPTIONS OF SMALL GARDENS.

Clauses 25, 26, and 27 give power to the Commissioners in certain cases to exempt from rent-charge small gardens and lawns which have not contributed to the averages on which the commutation is based, and when it has been effected without taking them into account.

CLAUSE XXVIII.

BOUNDARIES.

Clause 28 enables the Commissioners to adjudicate on boundary questions on the application of two thirds in number and value of the landowners of any one parish, although the landowners in the adjoining parish, where the boundary is in dispute, do not join in the application, as required by 2 & 3 Vict. c. 62, § 34, 35: notice, however, is to be sent to the officers of the latter parish, and to be advertised; and if, whilst such notice is pending, two thirds in number and value of the landowners in such parish shall object to the Commissioners' acting on such ex parte application, they are forthwith to stay proceedings.

CLAUSES XXIX. XXX.

INTERPRETATION.

Clause 29 provides that the four former Acts and this Act shall be read as one Act.

Clause 30 provides for the alteration of the Act during the present session.

AN ACT, &c.

3 Vict. c. 15.

An Act further to explain and amend the Acts for the Commutation of Tithes in *England* and *Wales*.

[*4th June*, 1840.]

WHEREAS by an Act passed in the seventh year of the reign of His late Majesty King WILLIAM the Fourth, intituled "An Act for the Commutation of Tithes in *England* and *Wales*," it is enacted, that from the 1st day of January next following the confirmation of any apportionment in any parish under the said Act the lands of such parish shall be absolutely discharged from tithes, except as in the said Act is provided in certain cases, and instead thereof there shall be payable to the person entitled to such tithes, and in that behalf mentioned in the said apportionment, a sum of money in the nature of a rent-charge issuing out of the lands charged therewith; and by an Act passed in the 1st year of the reign of Her

6 & 7 W. IV. c. 71. s. 67.

7 W. IV. & 1 Vict. c. 69, s. 11.

present Majesty, intituled "An Act to amend an Act for the Commutation of Tithes in *England* and *Wales*," provision is made for the lands in a parish being discharged from tithes, (except as in the said first-recited Act is excepted) by agreement between the parties to any parochial agreement or supplemental agreement, from certain days preceding or following the confirmation of the apportionment, instead of the said 1st day of January next following such confirmation, but so that the first payment of the rent-charge be made and recoverable at the expiration of six calendar months from the time from which such lands are discharged from the payment of tithes; and by an Act passed in the last session of parliament the commissioners appointed under the said first-recited Act are enabled by their award, and the landowners and titheowners by supplemental agreement, in like manner to fix the period at which any rent-charge shall commence: And whereas, after an agreement for or award of rent-charge has been made and confirmed by the said commissioners, much delay is often occasioned in settling and adjusting the apportionment before the same can be confirmed by the commissioners; and, to avoid the loss of the proportion of tithes or composition for the period intervening between the

2 & 3 Vict. c. 62, s. 10.

expiration of any former agreement or composition and the commencement of such rent-charge, the titheowner is compelled to have recourse to taking tithes in kind, or to a suit in equity; and in other cases, by reason of the lands so remaining subject to tithes, or composition for tithes, during such period, such tithes continue to be taken in kind, or may be so taken on the determination of any composition existing at the date of such agreement or award, notwithstanding that the parties have agreed for, or the commissioners awarded, the sum which under the provisions of the said Acts ought to be taken as the permanent rent-charge payable instead of such tithes; and great hardship is thereby occasioned, contrary to the spirit and intent of the said Acts: * And whereas

* The chief reasons on which the enactments contained in the first ten clauses of the present Act are founded, are set forth in the preamble. Their operation extends to four classes: 1st. Owners of any of the lands intended to be discharged. 2d. Occupiers of any such lands. 3d. Owners of lands discharged under this Act who may wish to prevent any arrear of rent-charge from being accumulated by reason of the land being so discharged, and hence neither subject to the payment of tithes, or of their proportion of rent-charge, until after the confirmation of the apportionment: such persons may by clause 4 undertake the payment of such an amount as would represent the probable proportion of the rent-charge so payable in respect of their lands. And 4thly. Occupiers of lands so discharged, entitled under the 79th clause of the

it is expedient to make provision for remedy thereof, and otherwise to explain and amend the said recited Acts, in manner hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

original act to deduct the amount of rent-charge from their rent, and who may in like manner be desirous of preventing any accumulation of arrears from a similar cause. Clause 6 enables such persons to take the payment on themselves, if their landlords refuse to do so.

It is to be observed, 1st, That the period at which a declaration of discharge from tithes, or composition can be made, is after the rent-charge has been fixed by a confirmed award or agreement, and before the confirmation of the apportionment. 2dly, That the application must be in writing, and by the effect of the interpretation clauses may be from one owner or occupier, or many. 3dly, That security, the nature and amount of which are in the discretion of the commissioners, must be given for payment of the whole rent-charge to the parties duly entitled. 4thly, That although the declaration of discharge must fix the date from which it shall take effect, such date is limited to the days fixed in the first proviso, and can only operate in cases of composition or rent in the nature of composition from the date of its determination, and in the case of certain leases mentioned in the 2d clause, the discharge cannot have effect on the lands included in them till after the expiration of such leases. The form of declaration would of course provide for these different periods of discharge.

that in every case where an annual sum by way of rent-charge shall have been fixed in any parish, instead of the tithes of such parish, either by agreement or award, it shall be lawful for the said commissioners, by a declaration in writing under their hands and seal of office, or the hands of any two of them, at any period after the confirmation of any such agreement or award respectively, and before the confirmation of the apportionment to be made in respect of the rent-charge so fixed, upon the application in writing of any landowner or occupier, and upon such security* being given to the said commissioners as they shall in their discretion think sufficient for the due payment to the parties entitled thereto of such rent-charge from the day to be fixed in such declaration, to declare that the lands in

Power to declare Lands discharged from tithes in certain cases after confirmation of the award or agreement for gross rent-charge.

* The Commissioners will judge of the form and extent of the security, but as the remedy given by Clauses 7 and 8 is on a judge's order, and may be put in force if any half-yearly payment be in arrear twenty-one days, a mere covenant or bond that the rent-charge shall be paid would be sufficient, the solvency of the parties giving it being the main object to be looked to. The remedy for the parties giving the security against the landowners for payment of their due proportion of the rent-charge after the apportionment is completed is given at clause 7; and clause 8 gives a further remedy to the titheowner if the security prove insufficient.

such parish shall be discharged from the liability to payment or render of tithes, or composition or rent in the nature thereof instead of tithes, and that instead thereof the annual payment or rent-charge so fixed by any such award or agreement respectively shall be paid to the person entitled to the same by half-yearly payments, commencing and calculating from such day of discharge named in such declaration as aforesaid: Provided always, that the day to be fixed in such declaration of the said commissioners as aforesaid shall, in every case in which any agreement for a composition or rent in the nature thereof instead of tithes shall be in force at the time of making such application to them as aforesaid, be the day on which such composition or rent shall determine, and in every other case shall be either the 1st day of January, the 1st day of April, the 1st day of July, or the 1st day of October, either before or after the day on which the agreement or award fixing the amount of such rent-charge shall bear date, as to the said commissioners shall appear most just and equitable: Provided also, that when such period of discharge shall have been fixed to take effect from any of such days preceding the date of such agreement or award, the said commissioners shall cause due enquiry to be made, and

As to the time of such rent-charge commencing.

Intermediate payments, &c. to be deducted.

shall allow and deduct from the first payment to be made under such security the value of any tithes which shall have been rendered in kind, and the amount of any payment in respect of tithes, or composition or rent as aforesaid, which shall have been made between such day and the date of such first payment of rent-charge.*

Leases of tithes granted before 25th March not to be affected by this Act.

2. Provided also, and be it enacted, that nothing in this Act shall extend or be construed to extend to annul or make void any lease or leases of tithes granted before the twenty-fifth day of March and which shall end or determine on or before the first day of January next; and that in any parish or place where such lease or leases shall have been granted as aforesaid, no tithepayer shall be at liberty to make the application hereby authorized to be made, until after the expiration of such lease or leases respectively, except in respect of lands the tithes whereof are not included in such lease.†

* As the value or amount of any render or payment is to be deducted from the first half-yearly payment of rent-charge, care must be taken that the period of discharge shall not be so remote as to allow the amount of the deduction to exceed the amount of the half-year's rent-charge.

† In this case, as in the cases where part of the lands are liable to the render of tithes in kind, and part to the payment of composition, the persons giving the security would

Notice of declaration to be published.

3. And be it enacted, that the said commissioners shall, within ten days after the receipt of such application, cause notice thereof to be given to the titheowner to whom such rent-charge will be payable,* and shall cause notice of such declaration to be twice published in some newspaper having circulation in the county where such parish is situated within twenty-one days from the date of such declaration, and from and after the expiration of such twenty-one days all the provisions of the said recited Acts applicable to the rent-charge payable after the confirmation of the apportionment shall be applicable to the rent-charge payable by virtue of the provisions hereinbefore contained from the period fixed by any such declaration.†

4. And be it enacted, that if any owner‡ of

have to provide for the balance between the amount payable under the composition and leases, and the gross rent-charge.

* The object of this notice is evidently to give time for the titheowner to be heard, and the facts enquired into before the signature of the declaration.

† As, for instance, the liability of the rent-charge thus secured to be paid, to rates, &c. (see 6 & 7 W. IV. c. 71, § 69, 71-79, &c.)

‡ It must be recollected that although only one person, or a few may give the security, the discharge applies universally through the parish. Hence, as all the lands will be discharged from tithes, and an interval may elapse of two years and up-

lands so discharged from such liability shall be desirous of paying, in exoneration of such security, the proportion of rent-charge to which the whole* of such lands, whether in his own occupation or in the occupation of any tenant, shall be liable, it shall be lawful for such owner to apply in writing to the valuer or valuers appointed to apportion such rent-charge, at any time after they shall have subscribed the declaration required in that behalf in the said first-recited Act, and before the confirmation of the apportionment, and to demand of such valuer or valuers a statement of the probable amount of such proportion, and such valuer or valuers shall and he or they is or are hereby required to furnish the same accordingly, and shall distinguish† therein the probable amount to which the whole of the lands in the occupation of any tenant under such owner would be liable; and

Provision for landowner paying estimated proportion of rent-charge in aid of security.

wards before the rent-charge is payable under the apportionment, it might happen that some tenant liable to render tithes may leave his occupation, or die without the means of meeting the arrears, which being a charge on the land would, in that case, fall on the landlord. This enactment was introduced to obviate such an injustice, and its provisions seem plain and sufficient for the purpose.

* A landowner cannot avail himself of this provision for a part only of his lands in the parish.

† This has reference to the power of the landowner of distraining for any amount paid by him under this provision, as rent.

on receipt thereof such owner may cause a copy of such statement, or an extract of such parts thereof as shall relate to the lands in the occupation of any tenant, who, but for such declaration of discharge, would be liable to the render or payment of tithe in respect of such lands, to be served on such tenant by leaving the same at his usual place of abode, with an undertaking subscribed thereto by such owner to pay the amount set forth in such statement in aid or exoneration of such security; and in every such case such tenant shall thenceforward be liable to pay to such owner, by way of additional rent, such estimated proportion at the half-yearly days of payment fixed in the award or agreement for payment of rent-charge, and such owner shall be entitled to demand and recover the same as rent by all the usual remedies for recovery of rent in arrear, until the half-yearly payment falling due next after the confirmation of the apportionment: Provided always that it shall be lawful for any such landowner or tenant, at any time within six months after the date of such confirmation, to apply to the said commissioners to take an account of the amount paid by any such tenant, and certify the amount of the difference, if any, between the amount so paid and the amount of rent-charge calculated as finally apportioned on such lands for the same period as such estimated amount has been

paid, and if the rent-charge finally apportioned shall be greater than the amount so paid it shall be lawful for such owner to demand and recover the difference accordingly; but if such tenant shall have paid more than the amount of such rent-charge, then it shall be lawful for such tenant, or (in case of his death) for his executors or administrators, to deduct the excess so verified as aforesaid from the next payment of rent accruing after the date of such certificate. Provided also, that in the event of the expiration or other sooner determination of the period of tenancy before the confirmation of the apportionment, such excess shall be deemed a debt due to the tenant, his executors, or administrators, and shall be recoverable in an action of debt to be brought against such landowner as aforesaid, or his personal representatives.

Certificate of Commissioners to be evidence of right of recovery or retainer.

5. And be it enacted, that in every such case the production of such certificate as aforesaid, or of an office copy thereof, sealed or stamped with the seal of the said commissioners,* shall be sufficient evidence of the right to recover or retain the amount or excess in payment which shall appear by such certificate to have been made by the landowner or his tenant respectively.

* This provision is analogous to 6 & 7 W. IV. c. 71, § 2.

6. And whereas it may happen that a tenant,* being an occupier of lands, who shall, by virtue of the provisions of the said first-recited Act, be entitled to deduct the amount of any rent-charge from the rent payable by him to his landlord, may be desirous of paying, in exoneration of such security as aforesaid, the proportion of rent-charge to which the lands in his occupation shall be liable; be it enacted, that, upon the application in writing of any such tenant, the valuer or valuers shall, in like manner as aforesaid, furnish to such tenant a statement of the probable amount of such proportion of rent-charge as aforesaid, and on receipt thereof the tenant may cause a copy of such statement to be served on his landlord by leaving

* By 3 & 4 Vict. c. 71. § 79, any tenant occupying at the time of the commutation may, in the manner pointed out, dissent from paying the rent-charge, and thereupon standing relatively to such tenant in place of the landowner: as, for instance, in cases [illegible] the land, although subject to tithe, is let tithe free, and accounting for the tithes or composition to the [illegible] By the 5th Clause of this Act, the provisions [illegible] rent-charge after a confirmed apportionment, [illegible] rent-charges payable under the Act before [illegible] Before the above clause has been introduced [illegible] the manner of the case provided for at [illegible] tenants, entitled to deduct the [illegible] which they are liable accumulation of [illegible] in the possession of their landlord.

the same at his usual place of abode, accompanied by a written notice of his intention to undertake the payment of such proportion of rent-charge as aforesaid; and in case the landowner shall not, within twenty-one days after the service of such copy and notice, undertake, by some writing subscribed by him, or his agent lawfully authorized, and served in like manner as aforesaid upon the tenant, to pay the amount set forth in such statement, it shall be lawful for the tenant to undertake the payment thereof, and from time to time to deduct the amount paid by him from his rent until the period at which the half-yearly payment of rent-charge to be made next after the confirmation of the apportionment shall have become due: Provided always, that in every such case the provisions hereinafter contained for taking accounts between the person who shall have given such security as aforesaid and the owners of lands subject to the rent-charge shall be applicable to the case of every such landowner from whose rental such deductions shall have been made as aforesaid.

Provision for recovery of such rent-charge from persons giving security for same.

7. And be it enacted, that in every such case, if the person liable under such security shall not make due payment to the person entitled to the same according to the tenor of such security,

it shall be lawful for the said commissioners, from time to time, as and when any half-yearly payment of such rent-charge shall accrue, and the same or any part thereof shall remain unpaid for the space of twenty-one days from any day fixed for payment thereof, and notwithstanding execution shall have been previously issued in respect of any former arrears, to sue for and recover any such half-yearly payment, or so much thereof as shall from time to time remain unpaid in respect thereof, against the person liable under such security, by taking out a summons, returnable before a judge of any of the superior courts of common law, to compute what is due in respect of such rent-charge; and it shall be lawful for any judge of such courts, on hearing the parties, or such of them as shall appear, and on production of such security, and proof by affidavit of the amount so due as aforesaid, and of the service of such summons on such person or on any occupier of any of the the lands of such person in any such parish, by delivery of the same personally, or by leaving the same at his place of abode, to order that it be referred to the masters of the court to compute what is due in respect of such security, and to tax the costs of such application, and all such orders shall have the effect of judgments in the superior courts of common law in like

manner as rules of such courts,* and execution may issue accordingly, and such security shall be available against such person liable under the same up to and including the half-yearly payment accruing due next before the confirmation of such apportionment,† and shall be in full force notwithstanding any change in the party entitled to such rent-charge.

Provision for recovery of payments under security.

8. And be it enacted, that in every such case the said commissioners shall make due enquiry as to any payment of rent-charge made by any such person in respect of such security previous to the confirmation of the apportionment of such rent-charge, and shall endorse on such apportionment a certificate of such payment, and that the parties entitled to such rent-charge have been duly paid the amount thereof according to the tenor of such security;‡ and such

* By the Act for the abolition of imprisonment for debt, 1 & 2 Vict. c. 110, § 18, parties are enabled to issue execution on a rule of court, as in the case of a judgment. This clause gives a like effect to the order of a judge at chambers.

† After the apportionment takes effect the payments will of course be made under it. Care must be taken that the days of payment under the declaration of discharge, and under the apportionment correspond.

‡ The effect of this provision is, that the party giving the security cannot enforce payment from any other landowner

person shall thereupon, after the confirmation of such apportionment, be entitled to recover the amount specified in such certificate as having been paid by him, against the lands of the said parish subject to such rent-charge, in the proportions fixed for payment of rent-charge by such apportionment, by distress and entry on such lands respectively, and shall have the like remedies or modes of recovery as are given to owners of rent-charge for recovery thereof in the said recited Acts or any of them: Provided always, that if the owner or occupier of any such lands shall have contributed to the payment of such rent-charge, or of any part thereof, or of the arrears thereof, under such security, or in exoneration thereof, it shall be lawful for him to take out a summons, returnable before any judge as aforesaid, to stay any proceedings taken by the person liable under such security as aforesaid, for the purpose of taking an account of what he shall have so contributed or paid in respect of such rent-charge or arrears; and it shall be lawful for any judge as aforesaid

Provision for taking accounts between the person giving security and land-owners contributing thereto.

who has contributed to exonerate the security without giving credit for such contribution, nor until he has himself discharged his security by payment to the owner of the rent-charge of all that is due to him. The remedy here given does not take effect till after the apportionment comes into operation, for otherwise the Act would have the effect of an apportionment.

to refer it to the masters of the court to take such account and make all just allowances between the parties; and if, on taking such account, such owner or occupier shall be found to have paid his due proportion, or any amount exceeding the same, according to the proportionate amount of rent-charge fixed on such lands, then it shall be lawful for any judge as aforesaid to stay proceedings, and order payment, by the person liable under such security, of the amount, if any, so overpaid by such owner or occupier, as the case may require, and every such order shall have the effect of a judgment as aforesaid;* but if on taking such account the whole or any balance shall be found due from such owner or occupier, then it shall be lawful for such judge to allow the same against such owner or occupier, whose lands shall thereupon be liable to the repayment thereof to the person liable under such security, and who shall be entitled to the said remedies in respect thereof accordingly; and the cost of every such proceeding shall be in the discretion of the judge hearing the same, and shall be added to the amount found due on such order, if he shall see fit so to direct: Provided also, that no such security shall be available by the person liable

Period for which security to be

* See note to Clause 7.

available against such owners.

under the same against any such lands for more than two years' payment or arrear of such rent-charge, unless the said commissioners shall, previous to the expiration of two years from the date of such security, have enlarged the operation thereof for any period not exceeding twelve months, by endorsement thereon, under their hands or the hands of any two of them, and which they are hereby authorized to do if they shall so think fit.*

If security insufficient, arrears may be recovered as if accruing after apportionment.

9. And be it enacted, that if such security shall be insufficient to meet the full amount of payments which shall accrue due in respect thereof, or the person liable under the same shall fail to make good the amount due thereon by the space of twenty-one days next after the date of the confirmation of the apportionment of such rent-charge, it shall be lawful for the person entitled to the benefit thereof to recover the same against the lands of the said parish subject to such rent-charge, in the proportions fixed in such apportionment, by the said remedies or modes of recovery given by the said

* This limit to the duration of the security was introduced to prevent wilful delay in completing the apportionment. It is however manifestly the interest of the person giving the security to have the apportionment completed as quickly as possible, and so get rid of its obligation.

recited Acts, or either of them, in respect of rent-charge fixed under any confirmed apportionment, in like manner as if the amount so due and in arrear had accrued subsequent to the confirmation.*

Security to be free of stamp duty.

10. And be it enacted, that every security taken by the said commissioners, by virtue of the provisions of this Act, and every assignment thereof, shall be free of stamp duty.†

Extension of power to fix sum to be paid after determination of composition. 2 & 3 Vict. c. 62, s. 10.

11. And whereas by the lastly-recited Act the said commissioners are empowered, by any award, or by a supplemental award, after a parochial agreement, in certain cases, and under certain provisions, to fix the sum to be paid in consideration of the time, if any, which may intervene between the termination of any pre-

* This clause is a protection to the owner of the rent-charge against the insufficiency of any security taken by the commissioners. The landowners are not damnified by such a provision, because by the last clause they are not liable to make good any payments to the person paying the rent-charge under the security until the Commissioners have certified that the owner of the rent-charge has been paid all that is due to him, in which case this provision would not be called into operation.

† See 6 & 7 W. IV. c. 71, § 91; 1 Vict. c. 69, § 12; 1 & 2 Vict. c. 64, § 2.

vious agreement or composition for tithes and the time at which any such rent-charge shall commence; and it is expedient to extend such power in manner hereinafter mentioned; be it enacted, that it shall be lawful for the said commissioners, at any time before the confirmation of the apportionment of any rent-charge, to exercise the said powers so given to them for fixing the sum to be paid for such intervening time as aforesaid, by a supplemental award after an award.*

* The more especial object of the 11th Clause is to enable the commissioners by a supplemental award after an award to meet cases where nothing has been collected owing to the delay in completing the apportionment, and where no express time for the commencement of the rent-charge has been declared in an award or agreement, but the time of commencement has been left to the operation of the original Act. From the want of such a provision, the titheowner can only have recourse to the ordinary and vexatious remedy of a suit in equity. This power was given to the commissioners by the Act of last session, in cases of original award, or by supplemental award after a parochial agreement, for although the parties to a parochial agreement have the same power given to them by the 1 Vict. c. 69, § 10, it often happens that they see no reason for its exercise till after the confirmation of the agreement. The attention of the commissioners is sometimes also not called to the subject till after the confirmation of an award. The 2 & 3 Vict. c. 62, § 10, and the present clause, will meet every such emergency.

Particulars to be specified as to payment of such sum.

12. And be it enacted, that when any such sum shall be fixed to be paid in consideration of such intervening time as aforesaid, either by parochial agreement or supplemental agreement, or by award, or supplemental award, the parties by and to whom such sum is to be paid, and the lands in respect of which the same shall be payable, as also the proportionate amount to be paid by each party, shall be specified and set forth in the instrument fixing such sum, or in the instrument of apportionment to be made in pursuance thereof; and in default thereof such sum shall be payable by and to the parties, and in the proportions fixed in such apportionment in respect of the rent-charge therein provided for.*

Extension of power to fix period for commencement of rent-charge. 2 & 3 Vict. c. 62, s. 10.

13. And whereas by the said lastly-recited Act† the said commissioners are enabled by their award, and the titheowners and land-

* This provision supplies a deficiency in the former Acts, which only enacted that a gross sum might be paid, but did not provide for its apportionment. Under this clause the amount may be made payable by all or any of the landowners, according to the equity of the case, or by any agreed arrangement. If none be made, then the payment will follow the proportions of the apportionment.

† See the 2 & 3 Vict. c. 62, § 10, note (b) (White's Edition). The provision to which it relates is here extended to a supplemental award.

owners by a parochial agreement after an award, are enabled to fix the period at which the rent-charge shall commence, and it is expedient to extend such power in manner hereinafter mentioned; be it enacted, that it shall be lawful for the commissioners, by supplemental award, to exercise the powers so given to them for fixing the period at which any rent-charge shall commence, as well after an award as after a parochial agreement, where the same shall not have been previously fixed by any such award or agreement, or by any supplemental award or agreement, under the said recited Acts, or either of them, or this Act: * Provided always, that where the said commissioners shall not have fixed that the period at which any rent-charge shall commence shall be the 1st day of January next following the confirmation of the apportionment, such period shall be fixed by them on the 1st day of January preceding such confirmation, or on the 1st day of April, the 1st day of July, or the 1st day of October preceding or following such confirma-

* See 6 & 7 W. IV. c. 71, § 67, and 1 Vict. c. 69, § 11, with which the dates fixed by the first proviso correspond; a restriction being added, that the day fixed shall be the quarter-day nearest to the termination of a previous agreement, or customary year of tithing in the parish, subject to the proviso for taking accounts when the period so fixed shall precede the date of the award.

tion, whichever of such days may happen nearest to the termination of any previous agreement or composition, or of any customary year of tithing in the parish or district to which such rent-charge shall relate: Provided also, that when any period of commencement shall have been so fixed by the said commissioners in any award or supplemental award, on any day preceding the date thereof, the commissioners shall cause due enquiry to be made as to the value of any tithes rendered in kind, and the amount of any payment in respect of tithe which shall have been made, subsequent to such period of commencement, and prior to the first day fixed for payment of such rent-charge, and shall take into account and allow such value or amount to be deducted from such payment accordingly.

Extension of powers to substitute fixed rent-charge instead of contingent rent-charge. 2 & 3 Vict. c. 62, s. 11.

14. And whereas by the said lastly-recited Act powers are given to landowners and tithe-owners, and also to the said commissioners, to substitute a fixed rent-charge in certain cases instead of a contingent rent-charge, where lands are partially exempted from the payment of tithes or rent-charge by reason of having been parcel of the possessions of a privileged order, and it is desirable to extend such powers in

manner hereinafter mentioned; * be it enacted, that such power shall extend to all cases where, by reason of lands being partially exempted from the payment of tithes, by custom or otherwise, or by being subject to a shifting or leaping modus, or other customary payment, or render due only on certain contingencies, a contingent rent-charge has been already fixed, or would, according to the provisions of the said firstly-recited Act, be fixed in respect of

* Many cases have occurred where parties are anxious to avail themselves of the provisions of the 2 & 3 Vict. c. 62, § 11, for substituting a fixed instead of a contingent rent-charge, as in the case of land formerly belonging to a privileged order, but where these provisions do not apply, because the lands are only exempt by custom. This applies to cases of partial and fluctuating exemptions, or moduses, as for instance where one sum is payable when the land is occupied by a parishioner, and another sum when occupied by a non-parishioner. All such contingencies are susceptible of arrangement by a moderate rent-charge, payable at all times and under all circumstances; and as this principle has been fully recognized in the case of some lands, no reason seems to exist why it should not apply to all. This clause extends the application of the principle accordingly, and its provisions may be put in force at any time before the confirmation of the apportionment; but if an award or agreement have already been confirmed, they may be adopted by supplemental award or agreement, the consent of both landowners and titheowners being requisite in every case. Moduses and prescriptions contingent on cultivation only, or relating to woodland, are excepted.

such lands; and it shall be lawful for the said commissioners, with such consent of both landowners and titheowners as in the said lastly-recited Act is required in that respect, at any time before the confirmation of the apportionment of any rent-charge, by any award, or by a supplemental award, where an award or parochial agreement has been made before the passing of this Act, or for the landowners or titheowners, by a parochial agreement or supplemental agreement where a parochial agreement or award has already been made in respect of such lands, to exercise such powers, in such manner, and subject to the same conditions as are given by the said lastly-recited Act in cases of lands formerly part of the possessions of a privileged order: Provided always, and it is hereby declared, that nothing herein contained extends to cases of change of cultivation only, nor to cases of prescription relating to woodland.

Extension of powers in respect of Lammas and Common lands. 2 & 3 Vict. c. 62. s. 13.

15. And whereas by the said lastly-recited Act certain provisions are made and powers given in respect of the tithes of lammas and common lands, which powers are to be exercised by the landowners and titheowners by parochial agreement, or by a supplemental

agreement after a parochial agreement, and by the commissioners by compulsory award, or by a supplemental award after an award; be it enacted, that such provisions may be carried into effect, and such powers exercised at any time before the confirmation of the apportionment of any rent-charge, by the landowners and titheowners by a supplemental agreement after an award, or by the commissioners by supplemental award after a parochial agreement.*

* It often happens that there is great difficulty in getting the parties to meet, and go through the machinery of a parochial agreement for the general purposes of a commutation; but when this has been once accomplished, it is next to impossible for those interested in rectifying any omission or defect in the first agreement to persuade others not so interested to undergo the trouble and incur the expense of a second agreement. There are also cases where the commissioners have made an award, and in other cases the parties have made a parochial agreement, without being aware of the fact that there are lammas lands or titheable commons in the parish, and this can be remedied at much less cost by a supplemental award than in any other way. But such a course of proceeding is prevented by the wording of the 2 & 3 Vict. c. 62, § 13, which restrains the interference of the commissioners by supplemental award to cases of award, and of the parties by supplemental agreement to cases already dealt with by parochial agreement. The present clause contains the requisite remedy.

Commissioners to give notice of proceeding by supplemental award.

16. And be it enacted, that in every case where it shall be the intention of the commissioners to proceed in any parish under this Act by supplemental award after a parochial agreement, either to fix the period of the commencement of such rent-charge or to carry into effect the provisions and powers of the said lastly-recited Act in respect of the tithes of Lammas and common lands, they shall cause the like notice of their intention to be given in such parish as is required by the said first-recited Act in the case of an award; and if at any time after giving such notice, and before the expiration thereof, any proceedings shall be had under the said recited Acts, or either of them, or this Act, by the landowners and titheowners in such parish, towards making and executing any parochial agreement or supplemental agreement in respect of the matters specified in such notice, the commissioners shall refrain from acting on the same until the result of such proceeding shall appear.*

Extension of powers of conveyance of lands to trustees and

17. And be it declared and enacted, that so much of the said lastly-recited Act as relates to the vesting of an estate of inheritance as to any

* The object of this clause is to give effect to voluntary proceedings, where the parties are disposed to adopt them, even after the commissioners have interfered, The provision is similar to one in the original Act, Clause 36.

feoffees for parochial purposes. 2 & 3 Vict. c. 62, s. 21.

lands in any ecclesiastical titheowner and his successors, notwithstanding the same be made by any corporation sole or aggregate, or any trustees or feoffees for charitable purposes, otherwise restrained from or incapable of making any such valid conveyance or assurance, extends to churchwardens and overseers, or to trustees or feoffees of parish property, or of property held by or vested in such trustees or feoffees for parochial or other uses or purposes in the nature of a parochial or public trust.*

Power for parties to parochial agreement, and for commissioners, to declare the

18. And be it enacted, that in any case where the parties to a parochial agreement, or the commissioners in the case of an award, shall have proceeded, according to the provi-

* This clause is also an extension of a provision given by the 2 & 3 Vict. c. 62. By the 21st section of that Act, lands held by corporations or trustees of charities, given in commutation of tithes, were declared to be well vested in the ecclesiastical titheowners, to whom they were conveyed; a provision introduced to facilitate the working of the tithe-commutation Acts, in that respect. The present clause has been introduced, extending the principle to lands held for parochial and other public purposes, in consequence of the commissioners finding that some of the parties interested in such lands are anxious to have the means of giving them in commutation. In the case of parish land which, by the operation of the Poor Law Amendment and Workhouse Property Acts, is under the control of the poor-law commissioners, any arrangements for taking such land would, as a matter of title, be subject to their regulations.

sions of the said recited Acts, to ascertain and fix a rent-charge in any parish wherein any of the lands shall at the time of making such agreement or award be cultivated as hop grounds or market gardens, and in case of proceeding by award when notice shall have been given that the tithes of any of the lands so cultivated should be separately valued, it shall be lawful for the said parties to declare in such agreement or for the said commissioners to declare in such award the amount of extraordinary charge per acre to be in future payable in respect of hop grounds and market gardens respectively in such parish or any district therein; and the rent-charge mentioned in every such agreement or award respectively shall, subject to the addition of such acreable extraordinary charge, consist of the amount agreed for or awarded in respect of the tithes in such parish, other than the tithes of the lands cultivated therein as hop grounds and market gardens respectively, and the ordinary charge in respect of the lands so cultivated as hop grounds and market gardens respectively added thereto: Provided always, that no such extraordinary charge shall be payable in respect of any such hop grounds and market gardens during the first year, and only half such extraordinary charge during the second year, in which they shall be newly cultivated as such, whether such new cultivation

Amount of extraordinary charge to be payable in respect of hop-grounds, &c.

No extraordinary charge payable on hop grounds, &c. for the first year of their being cultivated as such, &c.

shall have commenced before or after the making of such parochial agreement or award as aforesaid.*

Extraordinary rent-charge need not be distinguished on separate lands in apportionment.

19. And be it enacted, that it shall not be necessary to distinguish in any apportionment the amount of extraordinary rent-charge to be charged upon the lands of each individual landowner which shall be cultivated as hop gounds, market gardens, orchards, fruit plantations, or mixed plantations of hops and fruit, provided that the acreable amount of extraordinary charge for all the lands so cultivated respectively in any district which shall have been assigned, or in any parish wherein any extraordinary rent-charge shall have been declared, previous to the confirmation of the in-

* This and the following clause, both of which, as in the former Acts, have been prepared under the superintendence of the parties most interested in their operation, do not disturb in the least the principle on which extraordinary charges are based, but only alter the mode of declaring them, so as to save trouble, time, and serious expense, both to the commission and the parties.

The quantities of land cultivated with hops are so perpetually fluctuating, that when the apportionment is made, it is often found that the separate sum awarded for hops is a larger or a less sum than the quantity found by the apportioner in actual plant warrants.

This clause enables the assistant-commissioner to declare an acreable charge to attach on such quantity of land only as shall at any time be found to be in hops.

strument of apportionment, shall be inserted therein.*

Half-yearly payments of rent-charge to be regulated by averages declared under 6 & 7 W. IV. c. 71, s. 67.

20. And be it declared and enacted, that every half-yearly payment of rent-charge under the said recited Acts, or either of them, or this Act, shall from time to time be regulated by the averages published under the provisions of the said first-recited Act in the month of January next preceding every such half-yearly day of payment.†

* By the 55th Clause of the original Act, the apportionment is "to refer by a number set against the description of such (all) lands to a map or plan, to be drawn on paper or parchment, and the same number shall be marked on the representation of such lands in the said map or plan, and the draught of the apportionment shall also state the amount charged upon the said several lands."

Under this clause no sum is legally apportioned without the above-named references, and the extraordinary charges, and all the fractions of them, must be separated, and so imposed in detail.

The time, the trouble, and the consequent expense of doing this is great, and the moment a change takes place in the lands under hops, &c., it is all useless.

It is proposed by this clause to allow a general acreable charge only to appear in the apportionment (which is made practicable by the preceding clause), which the titheowner from time to time will collect from such acres as he finds so cultivated, as to be subject to an extraordinary charge; and all the expense, time, and trouble caused by the original clause will be saved.

† This clause is merely intended to remove a doubt which has been raised as to the effect of the 6 & 7 W. IV. c. 71,

strument apportionment to distinguish the amount rent-charge payable in respect of each close.

Act not to extend to cases in which valuers are already appointed.

21. And be it enacted, that, unless a majority in value of the owners of lands included in any apportionment shall, by writing under their hands, request the commissioners to omit the same, the instrument of apportionment shall distinguish the amount or portion of rent-charge payable in respect of the several closes of the said lands, and such closes shall be laid down in the map or plan annexed to such apportionment: Provided always, that nothing in this provision contained shall apply to any instrument of apportionment the valuers for effecting which shall have been appointed previous to the passing of this Act; and no such last-mentioned instrument of apportionment shall be deemed invalid if made in conformity with the instructions given to the valuers for making the same, although the amount of rent-charge payable in respect of the several closes of land shall not have been distinguished there-

§ 67, which provides for the sum payable in respect of rent-charge, varying according to the prices of grain, ascertained by the "then next preceding advertisement." The doubt is whether, as the rent-charge is in fact a yearly sum, although payable half-yearly, both of the half-yearly payments, annually dating from the commencement of the rent-charge, are to be governed by the advertisement preceding the first of such payments, or whether every half-yearly payment is to be guided by the advertisement next preceding it. As the latter was the intention of the original Act, and is also the more simple provision, this declaratory clause has been inserted to set the question at rest.

in, nor such closes laid down in the map or plan annexed thereto.*

22. And be it enacted, that every occupier whose lands or goods shall be liable to distress in respect of any expenses chargeable under the said recited Acts or either of them, or this Act, against any landlord or lessor of the lands in his occupation, shall be entitled to recover the amount of any such expenses which he shall pay, with interest on such payment from time to time at four per centum per annum, and may deduct the same from any rent or renewal fines payable to such landlord or lessor; † and where the estate of such landlord

For recovery of expenses in certain cases.

* There is no provision in the original Act expressly requiring an apportionment of the rent-charge, close by close. But in the Act 1 Vict. c. 69, § 5, its necessity is assumed and dispensed with, provided "three fourths of the landowners interested in the said apportionment shall by some writing under their hand request the commissioners to direct that such statement shall be omitted." The present clause distinctly requires that the apportionment shall be made close by close unless a majority in value of the landowners shall direct otherwise. As every surveyor, who has any pretensions to accuracy, prepares his field-books and rough draught close by close, this provision will give but little additional labour to him, but will allow the landowners the advantage of detecting any irregularity, and give them facilities for ascertaining the fairness of the rent-charge with reference to the several closes over which it extends.

† See 2 & 3 Vict. c. 62, § 18. Also 6 & 7 W. IV. c. 71, §§ 80 et seq.

or lessor in the lands in respect whereof such payment shall have been made shall be less than an immediate estate of fee simple or fee tail, or subject by settlement to any uses or trusts, he shall be entitled to charge such amount and interest upon such estate in like manner and subject to the same restrictions and provisions as are contained in the said recited Acts or any of them in relation to owners of particular estates, or of estates settled to the same uses and trusts as the lands in respect of which such expenses have been incurred respectively.

Power to charge expenses of commutation, in certain cases, on renewal fines, &c.

23. And be it enacted, that every person, as defined in the said first-recited Act,* who is empowered under the said recited Acts or any of them, or this Act, to charge upon his lands or rent-charge any expenses of commutation payable by him, may exercise such powers, in the case of expenses incurred, as well in respect of the commutation of tithes payable to him as the owner thereof as of tithes to which any lands whereof he is owner are liable; and the word "lands" shall, in the construction of the said Acts and of this Act, be construed to extend to and include any income or sum receivable by or accruing to such person from redeemed land tax, or from fines or other sums of money pay-

* 6 & 7 W. IV. c. 71, § 12.

able on the renewal of any term or estate in lands, tithes, or rent-charge holden of or by him to the same uses and upon the same trusts as the lands, tithes, or rent-charge in respect of which such expenses of commutation are incurred.*

Provision for discovery of books and documents relating to commutation. 6 & 7 W. IV. c. 71, s. 10.

24. And be it enacted, that notwithstanding anything in either of the said Acts contained, in all cases where under the said recited Acts or any of them the said commissioners or any assistant-commissioner may examine persons upon oath, and cause to be produced before them or him all books and other documents, as therein mentioned, relating to the commutation of tithes, the said commissioners or assistant-commissioner may, by summons under their or his hand, require the attendance of and examine any party interested in the lands or tithes of any parish, or any other person, and require the production also of all deeds and documents in the custody or power of either party, and allow such portions only of them to be read as in their or his judgment shall be thought proper; and also that in all cases where under the said Acts parties in a feigned issue are required to produce to each other, and their respective attornies or counsel, at

* See 2 & 3 Vict. c. 62, § 16, 17. Also Introduction, p. xvi. supra.

such time and place as any judge may order before trial, and also to the court and jury upon the trial of such issue, all deeds, books, and other documents, as in the said Act mentioned, relating to the matters in issue in their respective custody or power, the parties shall be obliged to produce only such documents, and such portions of them only shall be inspected or read, as the judge shall think proper, who may order the parties to discover the documents in their possession, upon oath, if he shall think fit; and it shall be lawful for the judge, and also for the commissioners or assistant-commissioner, in the cases aforesaid respectively, to direct copies or extracts to be taken or furnished of the same documents, at the expense of the person requiring the same, at the rate of sixpence for every common law folio: Provided always, that in no case shall any person be compellable to produce any part of the deeds or documents in his possession which relate to the title to the property therein referred to, but only such parts thereof as relate to the matter immediately in issue; and such person may, if he see fit, withhold any such deeds or documents, or any portion thereof, on making an oath that the deeds or documents or parts thereof so withheld do not relate to the matter so in issue as aforesaid.*

* See Introduction, p. xvii. supra.

Gardens or lawns of small extent may be exempted from rent-charge.

25. And whereas in many cases titheowners have, during the seven years of average prescribed by the said first-recited Act, forborne to take the tithes of lands used and occupied as gardens, lawns, or the like, or compositions in lieu thereof, on account of such lands being of small extent, and the tithes thereof being of inconsiderable value: be it enacted, that where in such cases the tithes of a parish or district have been commuted, whether by a parochial agreement or by a compulsory award, and it shall be shown to the satisfaction of the said commissioners that the rent-charge or rent-charges specified in the said agreement or award has or have been based upon the average value of the tithes of the said parish or district during the said seven years of average, exclusive of any tithes in respect of such gardens, lawns, or such like small holdings, according to the provisions of the said first-recited Act, and that no part of the said rent-charge or rent-charges has been agreed to be given or awarded in respect of the tithes of such gardens, lawns, or other such like small holdings, it shall be lawful for the said commissioners, if they think fit, to order and direct that no part of the said rent-charge or rent-charges shall be apportioned upon such gardens, lawns, or other such like small holdings.*

* The general principle on which the commutation of

The commissioners to cause a new apportionment to be made in certain cases in which the apportionment shall have included tenements from which no tithe has been taken during seven years previous to Christmas, 1835.

26. And whereas it hath happened that in cases where during the seven years of average prescribed by the said first-recited Act, tithes shall not have been demanded of certain tenements, by reason of their small extent or of the

tithes is effected under the 6 & 7 W. IV. c. 71. is, that the average annual amount which the parties shall have considered the tithes to be worth, as evidenced by the amount passing between them during the seven years ending Christmas 1835 shall be the future rent-charge. And in a vast majority of cases the exact amount of these averages has been agreed for or awarded. But it frequently has happened that small cottage gardens and other holdings described in this clause, have never contributed to these averages, the tithe-owner having waived his right because of the vexation it would cause to his poorer tithe-payers. As, however, this property has not become exempted by reason of such forbearance, the valuers, whose duty it is to apportion rigidly on all the lands of the parish liable to tithes, have in many cases been obliged, and in some directed, to fix a portion of the rent-charge based on the tithes paid by the other lands, on these holdings; thus manifestly giving the proprietor of such lands an advantage at the expense of their poor neighbours, the titheowner, to whom the right to claim an additional rent-charge really belongs, having forborne from making any such demand in the agreement. This clause by exempting holdings so circumstanced from the liability to any portion of the rent-charge gives a permanent effect to the good intentions of the titheowner, and secures the benefit to those for whom it was intended. The exercise of the power here given rests, however, in the discretion of the commissioners. It was introduced in the House of Lords on a petition from several clergymen, and on the motion of the Archbishop of Canterbury.

small amount of such tithes, such tenements have notwithstanding been included in the apportionment of the rent-charge for the parish, whereby the occupiers of such tenements have become liable to have their goods distrained upon, and the titheowner has been subjected to much increased difficulty and expense in the collection of the rent-charge, contrary to the true intent and meaning of the said first-recited Act; and it is therefore expedient, under certain restrictions, to give relief in such cases; be it enacted, that in any such case in which the apportionment shall have included any number of small tenements, exceeding in the whole one hundred, from which tenements no tithe or composition for tithe shall have been demanded or taken (notwitstanding their liability thereto) during the period of seven years next preceding Christmas in the year one thousand eight hundred and thirty-five, it shall be lawful for the commissioners, and they are hereby authorized, if they shall see fit, upon the application in writing of any ten or more of the owners or occupiers of such small tenements, or of the titheowner, and after satisfactory proof shall have been given that no part of the rent-charge has been agreed to be given or awarded in respect of the tithes of such small tenements, to cause a new apportionment to be made of the said rent-charge, and to order and direct that

no part thereof shall be apportioned upon such small tenements; and the provisions in the said first-recited Act contained for hearing and determining objections to apportionments, and for rendering the same, or any map or plan therein referred to, final and conclusive, shall be and are hereby respectively made applicable to every such new apportionment; and, subject to such provisions, such new apportionment shall commence and take effect from the half-yearly day of payment of the said rent-charge which shall happen next before the confirmation of the same apportionment: Provided always, that no payment of such rent-charge, or right to arrears thereof, which shall have become due or accrued on or before the said half-yearly day of payment, nor any remedy in case of non-payment, shall in anywise be affected by any such new apportionment.*

* This clause extends the application of the principle embodied in clause 25, to cases where an apportionment has already been made, where the magnitude of the evil, which the latter was intended to obviate, renders such extension a matter of justice. Thus its operation is confined to cases where there are more than one hundred instances of the apportionment having fixed a part of the rent-charge on holdings which had not contributed to it. The clause was inserted in the House of Lords on the petition of a clergyman, in a case where nearly 1,000 tenements had been thus fixed with rent-charges of 6*d*. or 1*s*. per annum the titheowner having, during the years of average, forborne to enforce his demand, the largertithe-payers being benefited by this spreading

27. And be it enacted, that the costs of and attending every such new apportionment shall be paid and borne by the parties making such application, in such proportions as the commissioners shall direct, and shall be recoverable in like manner as the costs of any apportionment under the said first-recited Act; and as to any part of such costs as may be borne by the tithe-owner, such titheowner, being an ecclesiastical beneficed person, may charge or assign the rent-charge as a security for the repayment of of such costs in like manner as for the costs of the commutation under the said Act.

Provision for the costs of new apportionment.

28. And whereas by the said lastly-recited Act powers are given to the said commissioners or any assistant-commissioner, upon the application in writing of not less than two thirds in number and value of the landowners in any parishes or townships, to set out and define the boundaries of such parishes or townships in manner in the said Act provided; and it is expedient to extend such power in manner hereinafter mentioned;* be it enacted, that it

Commissioners may adjudicate parochial boundaries on requisition of landowners of any parish. 2 & 3 Vict. c. 62, § 34, 35.

of their tithes over the small holdings. It is provided by the following clause that the costs of any new apportionment must be paid by the party applying for it.

* By the 6 & 7 W. IV. c. 71, § 24, any difference respecting boundaries which shall hinder an agreement may be submitted to reference by the parties. By the 45th Clause any such difference which shall hinder an award may be de-

shall be lawful for the said commissioners, or assistant-commissioner, but at the sole discre-

termined and decided by the commissioners or assistant-commissioners. By the 1st Vict. c. 69, § 2, power is given to the commissioners and assistant-commissioners, on the application of two thirds in value of the landowners to "*enquire into, ascertain, and set out the boundaries of any parish or district.*" And by the 2 & 3 Vict. c. 62, § 34, the commissioners are empowered to ascertain and set out existing boundaries, *or to define a new boundary*, on the request of not less than two thirds in number and value of the landowners of any parishes or townships, or of all the owners of any lands, where the boundary is in dispute. Now cases have occurred, and may occur, in which it is found impracticable to procure the signatures of two thirds in number and value of the landowners in each of such parishes or townships to the requisition, and thus great hardship may be inflicted on one of the places by delaying its commutation (the settlement of the boundary question being an essential preliminary), whilst no injury can accrue to the other by the more speedy arrangement of a matter that must be eventually determined. By the present clause the commissioners have a discretionary power to act upon the application of one only of the places interested, where such a course from peculiar circumstances may be equitable or essential.

A further benefit will be gained by the saving of expense in cases where the landowners in one of the parishes are very numerous, and their moving in the first instance may be a work of cost and labour, but wholly unnecessary if the Act be set in motion on the requisition of the other parish, where less difficulty may exist. It will be seen that the clause is well guarded, and ample notices are required to be given to the officers of the parish which does not join in the requisition, the landowners having power by the proviso to stay the proceedings of the commissioners on the ex-parte application.

tion of the said commissioners, and only in such manner as they shall see fit and proper, to exercise all and every the powers so given by the said lastly-recited Act relating to boundaries of parishes or townships, on the application in writing of two thirds in number and value of the landowners of any one parish, place,* or township whose boundary shall be in question, notwithstanding the landowners in the parish, place, or township adjoining such boundary shall not join in such requisition: Provided always, that in every such case the said commissioners or assistant-commissioner shall, twenty-one days at least before proceeding to make enquiry and adjudicate on such question of boundary, cause a notice to be sent by the post, or otherwise given, addressed to the churchwardens and overseers, and also to the surveyors of the highways of every parish, place, or township adjoining such boundary, of the intention of the said commissioners or assistant-commissioner to proceed on the question of such boundary, and shall specify in such notice a time and place of meeting so to proceed therein, and shall annex to each copy of such notice a copy of the application of the landowners requiring the commissioners to make such enquiry and adjudication, and shall also cause a copy of such notice to be inserted,

Notices to be sent to officers of adjoining parish and advertised.

* The word "place" is not in the former Acts.

once at least in two successive weeks previous to the day of such meeting, in some newspaper having circulation in the county where such parish, place, or township is situated; and no assistant-commissioner shall proceed in any such enquiry without exhibiting at such meeting the papers containing the advertisement of such notice, and also a certificate, under the hands of the said commissioners, or any one or two of them, of one copy of such notice having been respectively sent to such churchwardens and overseers, and a copy to such surveyors as aforesaid; and the assistant-commissioner shall thereupon proceed in all respects, and his proceedings shall be as valid and binding, as if the said enquiry had been instituted on the application in writing of two thirds in number and value, as well of the landowners of the parish, place, or township to which such notice shall have been so sent, as of the parish, place, or township causing such enquiry to be instituted:

Commissioners to stay proceedings on application of landowners of adjoining parish.

Provided nevertheless, that upon the application in writing, addressed to the said commissioners during the interval of such twenty-one days, of not less than two thirds in number and value of the landowners in any parish, place, or township adjoining such boundary, and not being parties to any such application as aforesaid, objecting to the said commissioners or assistant-commissioner proceeding under the same in the

matter of such boundary, all proceedings which shall have been instituted upon the application of such single parish, place, or township under this Act shall forthwith be stayed.

This Act to be taken as part of the recited Acts, and of 1 & 2 Vict. c. 64.

29. And be it enacted, that this Act shall be taken to be a part of the said recited Acts, and also of an Act passed in the second year of the reign of Her present Majesty, intituled an "Act to facilitate the Merger of Tithes;" and in the construction of this Act, unless there be something in the subject or context repugnant to such construction, the several words used in this Act shall have and bear the same interpretation as is given to such words respectively in the said Acts or either of them; and whenever a word importing the singular number or masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as one matter or thing respectively, and the converse.*

Act may be amended this session.

30. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

* This clause makes the former Acts and the present identical, and extends the interpretation of each to this Act.

APPENDIX.

AVERAGES.

1. THE average price of a bushel of corn for the seven years ending Christmas, 1835, on which every rent-charge is fixed, pursuant to 6 & 7 W. IV. c. 71, § 56, as declared by 1 & 2 Vict. c. 69, § 7, is,

Wheat.	Barley.	Oats.
s. *d.*	*s.* *d.*	*s.* *d.*
7 0¼	3 11½	2 9

2. The average price gazetted for the regulation of the half-yearly payments of the rent-charge, pursuant to 6 & 7 W. IV. c. 71, § 57, is,

	Wheat.	Barley.	Oats.
For the 7 years ending Christmas, 1836..	*s.* *d.* 6 8¾	*s.* *d.* 3 11¾	*s.* *d.* 2 9
——— 1837....	6 6¾	3 11¼	2 8¾
——— 1838....	6 6¼	3 9¾	2 8
——— 1839....	6 9	3 11¼	2 9¼

3. In order to ascertain with as much accuracy as practicable the variation of rent-charges according to the change of prices in each year, the calculation should be first made with respect to the gross rent-charge, and then the deductions for the apportioned sums may be ascertained by division. By this means the total of the apportioned sums will agree with the gross varied rent-charge. If, on the contrary, the calculation be first made on the smallest amount, and larger sums be ascertained by addition, it will require a very lengthy arithmetical computation to make the total of the apportioned sums agree with the gross sum.

4. In cases where any proportion of the rent-charge contains the fraction of a farthing, the owner of the rent-charge is entitled to a farthing for such fraction, and is not bound to deduct the fraction. It is therefore important to calculate the variation in the gross rent-charge, as above suggested—otherwise the payment of a farthing for every fraction will give an unnecessary increase to, as the discarding the fraction would cause an unnecessary deduction from, the gross rent-charge. A table on the former mode of calculation will also be found to give fewer odd farthings or fractions than any other method. The following table is so calculated, and may be found useful for the variations of the present year. If it be necessary to take two sums of the table to find the amount required, one fraction should be taken in favour of the owner of the rent-charge, the other fraction in favour of the occupier: if three items are requisite, two fractions may be taken in favour of the owner of rent-charge, and the remaining fraction in favour of the occupier;

On apportioned Rent-charge.			Deduction according to variation for 1840.	On Apportioned Rent-charge.			Deduction according to variation for 1840.	On Apportioned Rent-charge.			Deduction according to variation for 1840.
£	s.	d.	d.	£	s.	d.	s. d.	£	s.	d.	£ s. d.
	1	8¾	.... ¼		2	8	3½	7	4	13	1 ..	1 1½
	3	5½	.... ½		2	10	0	7½	4	14	9¾ ..	1 1¾
	5	2¼	.... ¾		2	11	8½	7¾	4	16	6¼ ..	1 2
	6	10¾	 1		2	13	5¼	7¾	4	18	3 ..	1 2¼
	8	7½	.... 1¼		2	15	2	8	5	0	0 ..	1 2½
	10	4¼	.... 1½		2	16	10¾	8¼	10	0	0 ..	2 5
	12	1	.... 1¾		2	18	7½	8½	20	0	0 ..	4 10
	13	9½	 2		3	0	4	8¾	30	0	0 ..	7 3
	15	6¼	.... 2¼		3	2	0¾	9	40	0	0 ..	9 8
	17	3	.... 2½		3	3	9½	9¼	50	0	0 ..	12 1
	18	11¾	.... 2¾		3	5	6	9½	60	0	0 ..	14 6
1	0	8¼	 3		3	7	2¾	9¾	70	0	0 ..	16 11
1	2	5	.... 3¼		3	8	11½	10	80	0	0 ..	19 4
1	4	1¾	.... 3½		3	10	8	10¼	90	0	0 ..	1 1 9
1	5	10¼	.... 3¾		3	12	4¾	10½	100	0	0 ..	1 4 2
1	7	7	 4		3	14	1½	10¾	200	0	0 ..	2 8 4
1	9	3¾	.... 4¼		3	15	10¼	11	250	0	0 ..	3 0 5¼
1	11	0¾	.... 4½		3	17	6¾	11¼	300	0	0 ..	3 12 6¼
1	12	9	.... 4¾		3	19	3½	11½	400	0	0 ..	4 16 8½
1	14	5¾	 5		4	1	0¼	11¾	500	0	0 ..	6 0 10½
1	16	2½	.... 5¼		4	2	9	1 0	600	0	0 ..	7 5 0½
1	17	11¼	.... 5½		4	4	5½	1 0½	700	0	0 ..	8 9 2½
1	19	7¾	.... 5¾		4	6	2¼	1 0½	750	0	0 ..	9 1 3¾
2	1	4½	 6		4	7	11	1 0¾	800	0	0 ..	9 13 4¾
2	3	1¼	.... 6¼		4	9	7½	1 1	900	0	0 ..	10 17 6¾
2	4	9¾	.... 6½		4	11	4¼	1 1¼	1000	0	0 ..	12 1 9
2	6	6½	.... 6¾								

Or in exact numbers....£1000 .... 12 1 9 $\frac{2021}{311295}$.

5. *Average Price of Corn during Seven Years ending at the Christmas preceding each Year for the last Twenty Years.*

NOTE.—Returns of this nature are made out and prepared at the office of the Comptroller of Corn Returns, Whitehall.

Years.	Wheat.	Barley.	Oats.	Years.	Wheat.	Barley.	Oats.
	s. d.	s. d.	s. d.		s. d.	s. d.	s. d.
1820	75 4	39 5	26 3	1830	62 8	35 0	24 11
1821	75 2	39 0	26 3	1831	63 0	35 3	24 11
1822	72 2	37 10	25 6	1832	61 7	34 3	24 2
1823	68 6	37 6	25 5	1833	60 10	33 3	23 0
1824	63 10	35 7	24 4	1834	59 3	32 3	22 1
1825	61 3	33 8	23 4	1835	56 3	31 9	22 0
1826	59 0	32 0	23 2	1836	53 8	31 10	22 0
1827	57 5	32 4	23 7	1837	52 6	31 6	21 10
1828	58 1	33 4	24 0	1838	52 2	30 6	21 5
1829	61 2	34 10	24 8	1839	54 0	31 6	22 3

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ERRATA.

Page ix. line 1, *for* "the day fixed in the agreement or award for the commencement of the rent-charge," *read* the date of the agreement or award fixing the amount of the rent-charge.

ix, last line, *for* appointment, *read* apportionment.

22, last line of note but two, *for* "clause 7; and clause 8," *read* clause 8; and clause 9.

56, 17th line of note, *for* proprietor *read* proprietors.

COMMUTATION OF TITHES

IN

ENGLAND AND WALES;

AND TO

CONTINUE THE OFFICERS APPOINTED UNDER THE SAID ACTS FOR A TIME TO BE LIMITED.

WITH NOTES.

BY

JOHN MEADOWS WHITE, ESQ.

SOLICITOR TO THE TITHE COMMISSIONERS FOR ENGLAND AND WALES.

LONDON:

B. FELLOWES, LUDGATE STREET.

1842.

C. ADLARD, PRINTER, BARTHOLOMEW CLOSE.

5 & 6 Vict. c. 54.

AN ACT, &c.

HEADS OF CLAUSES.

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	Page 18, line 7, *omit* such. 24, 2 from bottom, *for* providing, *read* provides. 25, last line, *after* land *insert* with them. 35, 2, *for* arrears, *read* arrear. — 8, *after* happened *insert* where.	19
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NOTICE.

By the original Act for the Commutation of Tithes for England and Wales, 6 & 7 W. IV., c. 71, § 6, it was enacted that no commissioner, assistant commissioner, or other officer appointed under that Act should hold his office for a longer period than five years next after the day of its passing (13th Aug. 1836), and thenceforth until the end of the then next session of Parliament. On the approach of this latter period an Act was passed (5 Vict. c. 7), providing that this restriction on the time of holding office should be repealed, and that no commissioner or other person so appointed should hold office for a longer period than until the 31st July 1842. The present Act has, therefore, been passed for the further continuance of the Commission; and the period of the Commissioners and its other officers exercising their powers is extended to 31st July 1847, and the end of the then next session of Parliament.

In referring to the probable renewal of their powers, the Commissioners, in their Annual Report for 1841, observed that they had "neither "alterations in the old Acts nor additions to "them to suggest, which affect in the slightest

"degree the broad principles of those Acts, "or the relative position and interests of the "land-owners and tithe-owners;" but they added, "during the working of an operation so "extensive as the Commutation of Tithes "throughout England and Wales, intricate and "perplexed cases occasionally present them-"selves wholly unforeseen," and requiring further powers and machinery for their adjustment. Some cases of this sort they reported for the consideration of the Government, by whose direction provisions were inserted in the Act to meet the difficulties pointed out by the Commissioners. Such are the provisions contained in §§ 2, 4, 5, 7, 8, 9, 10, 11 and 15; the main object of the Act, viz. the renewal or extension of the power of the Commissioners being confined to § 1. The other provisions are also calculated to facilitate the working of the Commutation in addition to the cases enumerated in the Report, of which the following is a copy.

J. M. W.

35, Lincoln's Inn Fields;
August, 1842.

REPORT of the Tithe Commissioners for ENGLAND and WALES to Her Majesty's principal Secretary of State for the Home Department; pursuant to the Act 6 & 7 Will. IV., c. 71.

TITHE COMMISSION OFFICE;
April 22, 1842.

SIR,

It is our duty to report to you the progress of the Commutation of Tithe in England and Wales to the close of the year 1841.

We have received notices that voluntary proceedings have commenced in 9381 tithe districts; of these notices 184 were received during the year 1841.

We have received 6348 agreements, and confirmed 5804; of these 442 have been received, and 668 confirmed during the year 1841.

2178 notices for making awards have been issued; of which 1008 were issued during the year 1841.

We have received 1355 drafts of compulsory awards, and confirmed 1030; of these 534 have

been received, and 470 confirmed, during the year 1841.

We have received 5220 apportionments, and have confirmed 4347, and of these 1532 have been received, and 1715 confirmed, during the year 1841.

Of the whole business of assigning rent-charges and apportioning them, it is probable that about half is completed.

Post, § 1, pa. 15. The Acts under which our Commission is constituted will expire on the thirty-first day of July next.

We are glad to be able to state that should a renewal Act be passed, we have neither alterations in the old Acts or additions to them to suggest, which affect in the slightest degree the broad principles of those Acts, or the relative position and interests of the land-owners and tithe-owners.

During the working, however, of an operation as extensive as that of the commutation of tithes throughout England and Wales, intricate and perplexed cases occasionally present themselves wholly unforeseen. With some of these it is difficult, and indeed occasionally impossible to deal, without powers or machinery which have not yet suggested themselves. We have a few such cases to report for your consideration.

ib. § 8, pa. 28. Some tithe-owners have spent considerable sums in contesting points before us, and have

died or vacated their preferment before the contest was closed. The successors of these persons reap the benefit of their exertions, while their families, who reap no benefit from them, are left charged with the expenses.

We think it is just that we should be enabled, with the consent of the bishop (in the case of ecclesiastical tithes) to charge these expenses on the rent-charge, whether the successor does or does not consent to their being so charged.

We have, subject to an appeal to the courts of law, a concurrent jurisdiction with the courts of equity in cases of dispute as to the liability of land to tithes. Our decisions, if not appealed against, or if appealed against, then the decisions of the courts of law, are final. These provisions of the Tithe Act were obviously meant to ensure the determination of all disputed claims to tithe before the general commutation was finished. Post, § 9.

It often happens that suits are pending in the courts of equity, on the very points we are called on to decide more summarily. The arrears claimed in these suits, and the costs of the suits themselves are of considerable importance.

Our decisions, though final as to the future, do not determine the question of arrears or costs in equity. Parties have still the power of dragging their opponents through the courts of

equity and House of Lords, by continuing suits as to points already substantially determined by a competent jurisdiction.

We beg to suggest that it is expedient the courts of equity should be invested with a power of deciding, on petition or other summary process, all questions as to the costs and arrears in suits before them, when such suits relate to questions already finally decided before us, or finally decided by the courts of law, when our decisions have been appealed against.

Post, § 4. In cases reserved for special adjudication we are bound to base our rent-charges on the rent-charges established by *award* in the neghbourhood.

We cannot use rent-charges established by voluntary *agreement* for the same purpose.

There seems no reason for this distinction, which probably originated in oversight. We find it very troublesome in practice, and beg to recommend its abolition.

ib. § 11. When security is given to pay an unapportioned rent-charge, and we extinguish tithes at once, the provisions of the Act of 3 & 4 Vict., c. 15, make it necessary that we should occasionally assign different days for the payment of the rent-charges due from those parties whose tithes were taken in kind, and of rent-charges due from those who had compounded for their tithe.

It would be convenient that we should have the power of making such equitable arrangement of the first payments, that after the first year, the whole rent-charges should be payable half-yearly, and on the same days.

The Commissioners of Land-tax have a power, in certain cases, of altering apportionments. Post, § 15.

Certificates of their alterations are sent to the parish, and the bishop's registrar, but not to us.

As the instruments now in our custody will probably always constitute a great central body of documents in which the majority of searches will be made, we think it may be expedient that a copy of all such certificates of alterations in apportionments should also be lodged with us.

The Acts under which at present exchanges can be made of glebe for other lands, are apparently expensive and troublesome in their operation. ib. § 5.

We are very frequently applied to, to authorize such exchanges on the commutation of parishes.

We think that our machinery would enable us, if we had the power, to assist parties in making such exchanges cheaply, and with great mutual advantage. The consent of the diocesan should, we think, be made necessary.

Cases also occur in which, although a certain quantity of glebe is known to exist, its identity cannot be established. The parties are frequently willing that we should set out and assign a known and defined quantity of land as the real glebe.

We think such a power would be of public use.

Post, § 7. A rather complicated state of circumstances occasionally presents itself, with which we find it difficult to deal equitably. Land at some past period has been given in exchange for tithe in a manner clearly illegal, and one which leaves the tithe-owner's right to his tithe, on his abandoning the land, valid. It is not quite clear even that he is obliged in all cases to abandon the land, and if he does, the persons entitled to receive it back can rarely be traced.

In such cases, if we find the land a fair equivalent for the tithes, we think we might properly be enabled to confirm and render valid the transaction. If the land is not an equivalent for the present legal rights of the tithe-owner, then if we were empowered to assign him a rent-charge which, with the land, would be such an equivalent, much confusion and injustice would, we think, be prevented.

ib. § 2. Doubts have been thrown on our power to sanction voluntary agreements after certain

litigated stages of a compulsory award have been gone through, and also on our power to deal with claims of exemption from tithe in one particular and limited class of cases. Post, § 10.

We give no opinion on the reasonableness of such doubts, but they prevail extensively enough to make it expedient to remove them.

We have the honour to be, Sir,

Your most obedient servants,

WM. BLAMIRE,
T. WENTWORTH BULLER,
RD. JONES.

To the Right Honourable
Sir JAMES R. G. GRAHAM, Bart.
&c. &c. &c.

AN ACT, &c.

5 & 6 Vict. c. 54.

AN ACT to amend the Acts for the Commutation of Tithes in *England* and *Wales*, and to continue the Officers appointed under the said Acts for a time to be limited.

[30 *July*, 1842.]

WHEREAS by an Act passed in the seventh year of the reign of his late Majesty, intituled "An Act for the Commutation of Tithes in England and Wales,"* it was among other 6 & 7 W. 4, c. 71.

* All the provisions of the original Act for the Commutation of Tithes in England and Wales, and of the acts for its amendment being of a permanent nature, except those which provided for the appointment and continuance of the commissioners and officers acting under them, this clause simply repeals so much of the former acts, as limits such appointments and offices to the 31st July, 1842, and continues them to the 31st July, 1847, and thence to the end of the then next session of parliament. The existing acts are 6 & 7 W. IV. c. 71; —1 Vict. c. 69;—1 & 2 Vict. c. 64;—2 & 3 Vict. c. 62;—3 & 4 Vict. c. 15;—5 Vict. c. 7, and the present act.

5 & 6 Vict. c. 54. things enacted, that no commissioner or assistant-commissioner, secretary, assistant-secretary, or other officer or person appointed under the said Act should hold his office for a longer period than five years next after the day of the passing of the said Act, and thenceforth until the end of the then next session of Parliament; and that after the expiration of the said period of five years and of the then next session of Parliament so much of the said Act as authorizes any such appointment should cease: And

5 Vict. c. 7. whereas by an Act passed in the last session of Parliament it was among other things provided, that so much of the last-recited Act as is herein-before recited should be repealed, and that no commissioner or assistant-commissioner, secretary, assistant-secretary, or other officer or person so to be appointed should hold his office for a longer period than until the 31st day of July 1842; and that after the said 31st day of July so much of the last-recited act as authorizes any such appointment should cease: And whereas it is expedient that the said commission be further continued; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of

Last-recited Act in part repealed. the same, that so much of the last-recited Act as is herein-before recited shall be repealed, ex-

cept so far as it repeals any part of the first-recited Act; and that no commissioner, assistant-commissioner, secretary, assistant-secretary, or other officer or person so appointed or to be appointed, shall hold his office for a longer period than the 31st day of July in the year 1847, and to the end of the then next session of Parliament. 5 & 6 Vict. c. 54. Continuance of Tithe Commission.

2. And whereas by the first-recited Act power is given to the land-owners and tithe-owners of any parish to make and execute an agreement for the commutation of the tithes of that parish as therein specified; and power is also given to the said commissioners, after the 1st day of October in the year 1838, to make compulsory awards for the commutation of tithes in any parish in which no such agreement shall have been made as aforesaid, and confirmed by the said commissioners: And whereas doubts have been entertained whether, pending the proceedings towards a compulsory award, the the land-owners and tithe-owners can make and execute a voluntary agreement which, if confirmed by the said commissioners, shall be valid, and it is expedient that such doubts be removed; be it declared and enacted,* That a parochial Agreements may be made pending proceedings towards Award.

* It often happens that after the proceedings towards a compulsory award have been instituted, the parties are desirous of coming to a compromise on points previously dis-

5 & 6 Vict. c. 54.

agreement for the payment of a rent-charge instead of tithes, as provided by the said Act, may be made in the manner therein specified, at any time before the confirmation of any award for the commutation of the tithes of the same parish; and such agreement may contain provisions for declaring how the expenses of the parties, or any of them, shall be defrayed, which shall have been incurred in contesting the award; and every such agreement, whether made before or after the passing of this Act, if confirmed by the commissioners, shall be as valid as if made

puted, and by the original Tithe Commutation Act (6 & 7 W. IV. c. 71 § 36) it is provided that after the commissioners have commenced compulsory proceedings, they shall stay them, in case notice be given of an intention to make a parochial agreement, until the result of such intention shall appear. But the doubts referred to in this clause have chiefly arisen in cases where it has been held that, after such a decision, or pending the period for appeal, or trial under the 45th and 46th clauses, a parochial agreement cannot be made unless the decision is adhered to. It may, however, happen that the decision itself may be of doubtful weight, the appellants or respondents may be desirous of avoiding litigation, some parties may be inclined to dispute, and others not, and the like, and in each of these contingencies the parties by mutual accommodation may be desirous of adjusting all disputes in their own way, providing for the costs previously incurred, and either adhering to the decision wholly or partially, or wholly rejecting it. The present clause enables them to do this by means of a parochial agreement, made before the confirmation of any compulsory award, the decision in such cases being a part of the "proceedings towards such "compulsory award or incident thereunto." Claims to exemption from any part of the rent-charge are left in such cases, as in that of an ordinary parochial agreement, to be set up or resisted by appeal from the apportionment.

and executed before any proceedings had been taken toward making a compulsory award, and shall have the effect of making null and void all the proceedings toward such compulsory award, or incident thereunto, except so far as the same shall be adopted in such agreement. 5 & 6 Vict. c. 54.

3. And be it enacted,* That in all cases where no time is fixed by any award or agreement commuting the tithes of a parish for the commencement of the rent-charge or rent-charges Parties may make a supplemental Agreement as to commencement of Rent-charge.

* By the 6 & 7 W. IV. c. 71, § 67, it is enacted that the lands in a parish shall be discharged from tithes from the 1st Jan. following the confirmation of the apportionment. But by the 1 Vict. c. 69 § 11 ;—2 & 3 Vict. c. 62 § 10, and 3 & 4 Vict. c. 15, § 13, various powers are given to the parties and the commissioners for fixing such commencement. These powers must be exercised before the confirmation of the apportionment, that act being the completion of the commutation, and hence the termination of the power of the commissioners in the parish to which it relates. The present enactment provides for cases where the apportionment has been confirmed, but no day for commencement has been fixed either by the commissioners or the parties, the provision of the first Act (§ 67) having been left in force. In such cases it has often been found that, when the customary year of tithing in the parish or district, or the termination of any previous composition is not concurrent with the date from which the rent-charge would commence, great inconvenience has arisen, and for these and other causes it is desirable that the parties should have the power of fixing a day of commencement, given by this clause. The commissioners' interference is limited in these cases to their confirmation of the supplemental agreement, which involves an inquiry into the due observance of the formalities of such an agreement before their sanction is given. (See also § 11 post.)

5 & 6 Vict. c. 54.

therein awarded or agreed upon, it shall be lawful, notwithstanding that the apportionment of the said rent-charge or rent-charges may have been confirmed, for the land-owners and tithe-owners, having such an interest in the land and tithes of the parish as is required for making a parochial agreement, to enter into a supplemental agreement for fixing the period at which the rent-charge or rent-charges to be paid under such award or agreement shall commence: Provided always, that such supplemental agreement shall be of no force or effect unless the same shall be confirmed by the said commissioners under their hands and seal; and a copy of every such supplemental agreement shall be deposited with the registrar of the diocese, and in the parish, in like manner as instruments of apportionment are deposited under the said first-recited Act.

Such Agreement to be confirmed, and a Copy deposited.

In making special adjudication an account may be taken of parochial agreements.

4. And whereas by the first-recited Act power is given to the said commissioners to make awards in cases reserved for special adjudication having regard to the average rate which shall be awarded in respect of lands of the like description and similarly situated in the neighbouring parishes: And whereas it sometimes happens that voluntary agreements for the commutation of tithes have been made in the greater part of such neighbouring parishes; be it en-

acted,* That, in awarding the rent-charge in any case so reserved, the commissioners shall be empowered to have regard to the average rate of commutation in respect of lands of the like description and similarly situated, not only in the neighbouring parishes in which there has been an award by the commissioners, but also in those in which there has been a parochial agreement for the commutation of tithes. 5 & 6 Vict. c. 54.

Powers for defining and exchanging Glebe.

5. And whereas it will be beneficial to both tithe-owners and land-owners if the tithe commissioners are empowered to define the glebe lands in those cases in which the quantity of glebe is known, but cannot be identified, and also to exchange the glebe lands or part thereof for other land; be it enacted,† That for the pur-

* By the 6 & 7 W. IV. c. 71, § 38, the commissioners are empowered in certain cases of fraud, collusion, or other special circumstances, to reserve the parish or district for special adjudication; and the rent-charge by clause 39 is required to be fixed, not by the produce or productive quality of the lands in the parish under adjudication, but by the rate of rent-charge *awarded* in neighbouring parishes where the lands are of a like description and similarly situated. This clause extends the standard by which special adjudications are to be guided to rent-charges fixed by *agreement*. In this, as indeed in every such case, the circumstances of each agreement or award adduced as forming part of the criterion for the proposed rent-charge, will be matter of inquiry and evidence before the commissioners or assistant-commissioner by whom the case is conducted.

† The leading acts for exchange and purchase of glebe are the 55 G. III. c. 147;—56 G. III. c. 52;—1 G. IV. c. 6, and 6 G. IV. c. 8; under which, incumbents, with the consent of the patron and bishop, may acquire or exchange glebe; but

5 & 6 Vict. c. 54.

pose of defining and settling the glebe lands of any benefice, on the application of the spiritual

the process is clogged with so many conditions that the cost of any proceeding under these acts is rarely less than £100, and often greatly exceeds that amount. Thus, six months' notice must be given by public advertisement three times, setting out the premises to be exchanged or purchased, and a like notice must be affixed three times on the church doors, a map or valuation must be made by a sworn surveyor, assisted by the patron, bishop, and incumbent; and after this is done, the bishop has to issue a commission of inquiry to not less than six persons, three of whom must be beneficed clergymen in the neighbourhood, and one a barrister of three years' standing, to be named by the senior judge of the last preceding assize, or, in Middlesex, by the Chief Justice of the Queen's Bench. These commissioners are required to inspect the premises, and to certify that the exchange is proper. Duplicates are required of all the deeds, and one part, with a copy of the maps, valuations, commission, and return, is required to be filed with the registrar of the diocese. These details are so productive of expense, and so liable to miscarry, from their complexity, that the act is often a dead letter; and it having been thought that the machinery of the Tithe-Commission is peculiarly well adapted to effect such exchanges this clause has been introduced for the purpose. The mode of effecting it is to extend to glebe lands the present powers of the commissioners, enabling them to define and to set out boundaries. These powers are to be found in 6 & 7 W. IV., c. 71, §§ 45, 46;—1 Vict. c. 69, §§ 2, 3; and 2 & 3 Vict. c. 62, § 34. By the latter clause the commissioners, on the application of two thirds in number and value of the landowners of any parishes, or of any two or more landowners, in the case of boundaries between their lands, may deal with such question, and "*ascertain, adjust, set out, and define the extent and boundaries between such parishes, or land; or draw and define a new line of boundary, as they may see fit,*" and the line so defined shall thenceforward be the boundary-line for all purposes whatsoever. By the 3d & 4th Vict., c. 15, some further powers are given, not material to the present purpose, which will be effected chiefly under the last-cited provisions, as the present power is limited to cases of consent.

person to whom the same belongs in right of such benefice, and with the consent of the land-owner or land-owners having or claiming title to the land so defined as glebe, and being in possession thereof, the tithe commissioners shall, during the continuance of the commission, as well before as after the completion of any commutation, have the same powers which they have for ascertaining, drawing, and defining the boundaries of the lands of any land-owners on their application; and also upon the like application* of any spiritual person the said commissioners shall have power to exchange the glebe lands, or any part thereof, for other land within the same or any adjoining parish, or otherwise conveniently situated, with the consent of the ordinary and patron of the benefice and of the land-owner or land-owners having or claiming title to the land so to be given in exchange for the glebe lands, and being in actual possession thereof as aforesaid, such consent to be testified as their consent under the first-recited Act is testified to anything for which their con- 5 & 6 Vict. c. 54.

* The power here given is confined to cases of ecclesiastical glebe, and is to be exercised on the application of the spiritual person holding such benefice. But the consent of the land-owner interested in the land to be defined or set out as glebe is required in such cases; and in cases of exchange, that of the patron and ordinary is required in addition, obviously for the purpose of preventing any waste of the benefice by an improvident exchange.

5 & 6 Vict. c. 54.

sent is therein required;* and in every such case the tithe commissioners shall make an award in like manner as awards are made under the first-recited Act,† setting forth the contents, description, and boundary of the glebe lands as finally settled by them, and of the lands awarded to the several parties to whom any lands theretofore part or reputed part of the glebe lands are to be awarded; and every such award shall have all the incidents of an agreement confirmed by the said commissioners for giving land instead of tithes,‡ and in every case of exchange shall operate as a conveyance of the lands theretofore part or reputed part of the glebe lands to the several persons to whom the same shall be awarded, and to their heirs and successors, executors and administrators, as the case may be; and such lands shall thereupon be holden by

* For definition of land-owner and tithe-owner (see 6 & 7, W. IV. c. 71, §12, and four following clauses); and for consents in respect of patronage, see ib., §§ 26, 28.

† Ib. §§ 50, 51, 52.

‡ By 6 & 7 W. IV. c. 71, § 31, every such confirmed agreement is declared to operate as a conveyance to the owner of the tithes or rent-charge, and the land on such confirmation at once vests on the like uses and trusts with the tithes or rent-charge. The provisions of the Act relating to persons under disability are also, by the same clause, made an incident of such confirmed agreement.

Where, therefore, land is exchanged under this clause the above provisions operate on the land taken by the spiritual person, party to the exchange. The clause itself further providing for the award of the commissioners operating as a conveyance of the land to the other party.

the same tenure, and upon the like uses and trusts, and subject to the like incidents, as the land awarded as glebe in exchange for the same was formerly holden; and the expense of so defining, exchanging, and settling any glebe lands shall be borne in such manner as the tithe commissioners shall think just. 5 & 6 Vict. c. 54.

6. And whereas the power of giving land instead of tithes has been found beneficial to both tithe-owners and land-owners, but such power has been inoperative in a great degree, by reason that the land-owners by giving land instead of vicarial tithe cannot free their lands from the liability to rectorial tithe, and the converse; be it enacted,* that it shall be lawful for any tithe-owner, with the consent of the patron and ordi- Extending Power of giving Land for Tithes.

* By the 6 & 7 W. IV. c. 71, § 29, twenty acres of land may be taken in exchange for an equivalent of rent-charge by any spiritual tithe-owner under a parochial agreement, and by § 62, after any apportionment has been made, but before confirmation, any individual may in like manner give twenty acres. But as land-owners are often desirous to free the rest of their land from *all* tithes, this clause has been inserted to enable any tithe-owner to assign a part of his rent-charge in aid of the land-owner's arrangements for exonerating them. Thus when a rector has already taken his twenty acres he can exonerate other lands from rateable tithes by taking vicarial rent-charge in exchange, and the land-owner can give its value in land to the vicar for that purpose, and the converse may be effected by a vicar. The proviso at the end, for carrying out the agreement by an award, ensures publicity and accuracy in the proceedings. The power is not confined to spiritual persons, but in the case of an exchange for land, the limit of twenty acres is preserved.

5 & 6 Vict. c. 54.

nary in the case of spiritual tithes, to be testified as their consent under the first-recited Act is testified to anything for which their consent is therein required, and subject in that case to the limitation of quantity of land provided by the first-recited Act, and subject to the approval of the tithe commissioners, to agree for the assignment to any other owner of tithes issuing out of the same lands of so much of his tithes arising within the same parish, or of the rent-charge agreed or awarded to be paid instead of such tithes as shall be an equivalent for the tithes belonging to such other tithe-owner issuing out of the same lands, or for the rent-charge agreed or awarded to be paid instead thereof, for the purpose of enabling any land-owner who shall be desirous of giving land instead of tithes to free his lands or any part thereof, from both rectorial and vicarial tithes, and from the payment of any rent-charge in respect thereof; and every such agreement shall be carried into effect by means of an award or supplemental award, to be made by the said commissioners either before or after the confirmation of the apportionment, in like manner as awards or supplemental awards are made by them pursuant to the powers vested in them before the passing of this Act.

5 & 6 Vict. c. 54.

Confirmation of old Agreements for giving Land for Tithes.

7. And be it enacted,* That where any agreement shall have been made before the passing of the first-recited Act for giving land or money, or both, instead of tithes or glebe or commonable or other rights or easements, which is not of legal validity, and such lands or money, or both, shall appear to the commissioners to be a fair equivalent for the said tithes or glebe, or rights or easements, they shall be empowered to confirm and render valid such agreement; and in case the same shall not appear to be a fair equivalent, the said commissioners shall nevertheless be empowered to confirm such agreement, and also to make an award for such rent-charge, which with the said land or money, or both, will be a fair equivalent for the said tithes or glebe, or rights or easements, and subject to such confirmation and award to extinguish the right of the tithe-owner to the perception of the said tithes, or his title to the said glebe

* Numerous cases have come before the commissioners where, from the want of proper attention to the existing law, or from other irregularities, exchanges of land for tithes have been made which are in law not valid, but which it would be desirable to sanction. This clause will effect the desired object; and to ensure an adequate exchange for the tithes thus surrendered, power is inserted for the commissioners to award as much rent-charge as, with the lands so irregularly given, will equalize the value.

By § 20 (post) the word glebe land is held to extend to any land belonging to a benefice, and the word lands, by 6 & 7 W. IV. c. 71, § 12, extends to all messuages, lands, tenements, and hereditaments.

5 & 6 Vict. c. 54.

rights or easements, or to the receipt of any rent-charge instead thereof, other than the rent-charge awarded over and above the lands or money or both so confirmed to them.

Power to charge Expenses of Commutation on Benefices extended.

8. And be it enacted,* That in every case in which any spiritual person shall have died or vacated his benefice before exercising the powers vested in him of borrowing money for the purpose of defraying so much of the expenses of commutation as is to be defrayed by him, and of charging the rent-charge with the repayment of the money borrowed, it shall be lawful for the tithe commissioners, with the consent of the

* This clause is inserted to meet cases of great hardship, where after an incumbent has incurred heavy expenses in carying out the commutation, he has died or vacated his benefice, and either he or his representatives have been called on to defray these expenses, although deprived of the benefit of the 6 & 7 W. IV. c. 71, § 78, and other enactments, which enable incumbents to charge such expenses on their benefices, the amount being subject to repayment, as in the case of loans from Queen Anne's Bounty Fund, by instalments running over twenty years. This clause empowers the commissioners to charge the benefices in the hands of the new incumbents, who are not in fact damnified, as they reap the benefit of the outlay of their predecessors, who, had they lived or remained in the benefices long enough, might, with the commissioners' consent, have charged the benefice, as the commissioners by this clause are empowered to do. And as the exercise of this power rests with the commissioners, and the consent of the ordinary is also requisite, the new incumbents have ample protection against being subjected to the charge of the needless costs of any litigious or improvident predecessor.

ordinary, to borrow money for that purpose, and to charge the repayment thereof upon the rent-charge, or so much thereof as they, with the like consent, shall think just, with interest thereupon, and for that purpose to assign the rent-charge in like manner as such spiritual person, if living or in possession of his benefice, could himself have done; and the person in whose favour such charge shall have been made, and his assigns, shall have the like remedies for enforcing payment of the principal and interest of the money so borrowed, in case of any arrear in payment of the said charge, as if such charge had been made by the person so dying or vacating his benefice. 5 & 6 Vict. c. 54.

9. And be it enacted, That* in all cases, whether the tithes of any parish have been com- For settling questions of Arrears and Costs in Suits in Equity.

* Although the tithe acts give power to the commissioners and assistant-commissioners to decide disputes and questions of moduses, exemptions, and the like, yet their decisions, even when final and conclusive on such questions, do not extend to arrears, which are excluded by 6 & 7 W. IV. c. 71, § 89, from the operation of the acts, or to the costs of suits raising the same or a like question and claiming such arrears. This clause is intended to save parties from the cost and vexation of a continued litigation after the question has been substantially settled by the commissioners. The power is applicable as well before as pending a commutation, and also after it has been completed. Many objections were taken during the progress of the measure to this clause on the ground that it interfered too much with the province and jurisdiction of the Court of Chancery, but the anomaly of the tithe commissioners

5 & 6 Vict. c. 54.

muted or not, where any question as to the liability of any lands to the render of tithes, or as to the existence of any modus or composition, real or prescriptive, or customary payment, or any claim of exemption from or non-liability to the payment of tithes in respect of any lands, shall have been heard and determined by the said commissioners, or by any assistant-commissioner under their direction, it shall be lawful for the said commissioners or any assistant-commissioner, after the time for appeal to a court of law from the said determination has elapsed,* or in case there has been such appeal, after the judgment of the court on such appeal,† to make an award, founded on the

and their assistant-commissioners having the power to decide the questions referred to in this clause in perpetuity whilst the parties were left at liberty to pursue an oppressive and possibly a wanton course of costly litigation, for the comparatively trifling object of a few years' amount of arrear, at the hazard of bringing two jurisdictions, intended by the legislature to be concurrent, into collision by an opposite decision, was so great that the present power was advisedly conferred on the tithe commissioners by Parliament, after full consideration by the highest authorities, and being sanctioned by them in its present form.

* This appeal is given by 6 & 7 W. IV. c. 71, § 46, in all cases where the yearly value of the subject matter of the decision exceeds £20, and must be brought within "three "calendar months next after such decision shall have been "notified in writing in such manner as the commissioners or "assistant commissioners shall direct to the parties interested "therein or their known agents."

† See 6 & 7 W. IV. c. 71, § 46.

decision of the said commissioners or assistant-commissioner, or the judgment of any court of law to which appeal shall have been made from the decision of the said commissioners or assistant commissioner, for the determination of all questions of arrears of tithes claimed in any suit which may be pending in any court of equity for the purpose of trying, as to the same lands,* such liability, or the legality of such claim, modus, composition, or customary payment, and

5 & 6 Vict. c. 54.

* The words 'as to the same lands' were introduced as sufficiently comprehensive to identify the question decided by the assistant-commissioners with any question of a like nature raised in the suit. In all the questions raised before the commissioners or assistant-commissioner, the parties would be the tithe-owner and land-owner; but the parties in a suit to try the same question would probably be the tithe-owners and the occupiers of the lands to which it referred. And again, where the suit had from time to time been abated, or parties had changed, it would be difficult so to confer a concurrent power as to arrears on the commissioners, or so to define it if conferred, as to identify the question before them with that raised in the suit. But by the connecting link of the words here inserted, not only may the question of modus exemption, and the like, set up in the suit be disposed of by the commissioners and assistant-commissioner, but also questions of any other modus or claim, in like manner as a court of law can do in the case of an issue directed by the Court of Chancery with power to endorse the *postea*, if any other claim, or a claim laid in a different manner, be given in evidence, touching the same land, though not in accordance with the claim as set up in the suit. In such a case substantial justice is secured by the power to declare the liabilty of any party to the suit to the payment of costs. Such a power is here given to the commissioners and assistant-commissioner, but the ascertaining their amount remains with the court in which they are incurred.

5 & 6 Vict. c. 54.

of the liability of any of the parties to payment of the costs of the proceedings in such suit, for which purpose they respectively shall have all the powers which under the said recited Acts, or any of them they have for ascertaining the value of the tithes of such lands;* and such award shall have the effect of the verdict of a jury, on an issue directed by the Court of Chancery satisfactory to the judge or court directing the same, and shall be received by the Court of Chancery as conclusive evidence of the liability or non-liability of such lands, and of the amount of such arrears, and of the liability of the several parties to the payment of costs in such suit; and any order of the Court of Chancery made thereon shall be binding on all parties, and no appeal to any other judge or court shall be brought against such order.†

The Act 2 & 3 W. IV, c. 100, not to have any operation as to any Award of the Commissioners in certain cases.

10. And be it enacted,‡ That where any ques-

* That is for summoning and examining witnesses, calling for books and papers, &c. (See 6 & 7 W. IV. c. 71, § 10.)

† It would seem that the course to be pursued by parties seeking the benefit of this clause would be in the first place to bring the case under the notice of the Tithe Commissioners, and after having obtained an award, to present a petition to the Court of Chancery praying an order similar to an order or decree on further directions, in the terms of the award.

‡ In cases where questions of *exemption* have been raised under Lord Tenterden's Act (2 & 3 W. IV. c. 100) the point generally turns on the fact of nonpayment of tithes, or enjoyment of the land without render or payment for the period mentioned by the Act. These suits to be available for any

tion is or shall be brought for the decision of the tithe commissioners or any assistant-commissioner, relative to any of the matters mentioned in an Act passed in the third year of the reign of his late Majesty, intituled "An Act for shortening the time required in Claims of Modus decimandi, or Exemption from or Discharge of Tithes," as to which any such suit shall have been commenced, and shall be pending as would have prevented the operation of the said recited Act, such recited Act shall not have any operation as to any award or decision respecting such question to be made by the said tithe commissioners or any assistant-commissioner. 5 & 6 Vict. c. 54.

party are required, for the most part, to have been brought before that Act passed, or within twelve months after—the day of passing having been the 9th August, 1832, (see same, §§ 3 & 4). Pending such suits the same question is often brought before the assistant-commissioner, but he is at a loss how to act, or rather is prevented from proceeding, as it would be competent for the landowner to show that no payment had been made in respect of the land for which the exemption is claimed within the prescribed period; whereas, if the suit were finished and tithes were decreed, the decree would have relation to six years prior to the filing of the bill, and in such case there would have been a payment within the prescribed period, and the claim to exemption would fail. Cases have occurred where this state of things is found to exist, and the only way to prevent injustice would be for the commissioners or assistant-commissioner to postpone their decision till the suit is finished. But the effect of this clause is to give the commissioners and assistant-commissioner a concurrent jurisdiction for trying questions of exemption or modus, raised and pending in such suits. When decided, the question of arrears (if any) would be disposed of under the preceding clause.

5 & 6 Vict. c. 54. Provision for fixing the same Days of Payment of all parts of the same Rent-charge.

11. And be it enacted,* That in any parish where any rent-charge has been agreed or awarded to be paid instead of tithes, and security has been given for payment of such rent-charge, and the lands in such parish have been discharged from payment or render of tithes or composition, or rent in the nature thereof instead of tithes, before the apportionment of such rent-charge, it shall be lawful for the tithe commissioners, by a declaration in writing under the hands of any two of them, and their seal of office, to fix the same half-yearly days of payment of the whole rent-charge after apportionment thereof; and in consideration that the payment of some sums will be thereby accelerated and the payment of other sums will be thereby deferred and retarded, to make such alterations and allowances in the payments to be made in the

* By 3 & 4 V. c. 15, § 1, *et seq.* landowners after an award has been made, and before the apportionment is completed, are empowered to discharge their land from tithes on giving security to the satisfaction of the Tithe Commissioners for payment of the rent-charge. But they are required to make their payments on certain specified days, and on any lands where a composition is in force, the time of payment of rent-charge can only commence from the expiration of such composition. It has happened that owing to some of the lands in a parish being under composition and some not, the rent-charge has dated from different days, or from the day fixed for its commencement by, or consequent upon, the apportionment. The commissioners having stated in their report that it had been found difficult to reconcile these dates, the present clause was introduced to obviate such doubts, and to enable the commissioners equitably to adjust the dates so as to make them all consistent with each other, and with the apportionment. (See note to § 3, *ante.*)

first year after the apportionment, both by way of interest for every sum of which payment will be thereby deferred, and by way of discount to be allowed for every sum of which payment will be thereby accelerated, as to the commissioners shall seem just. 5 & 6 Vict. c. 54.

Power to Owner of Rent-charge to let Land taken under Writ of Possession.

12. And be it enacted,* That it shall be lawful for any owner of rent-charge, having taken possession of any land for nonpayment of the rent-charge under the provisions of the first-recited Act, from time to time during the continuance of such possession to let such land, or any part thereof, for any period not exceeding one year in possession, at such rent as can be reasonably obtained for the same; and the restitution of such land on payment or satisfaction of the rent-charge, costs, and expenses shall be subject and without prejudice to any such tenancy.

* By the 6 & 7 W. IV. c. 71, § 82, in case the rent-charge shall have been in arrears forty days, and there is not sufficient distress on the premises, the owner of the rent-charge may enter and take possession of them, and hold and cultivate them till he is repaid; and by § 83 the landowner may recover them after an account is taken of the *rents and produce* received by the owner of the rent-charge whilst in possession. But cases have happened when parties have taken possession they cannot let the land, as no tenant will be found to take them by reason of his being liable to be turned out at a moment's notice in case the landowner calls for his land, and offers to account; and the owner of the rent-charge has no power to let the land except for this precarious period. This clause, therefore, provides a remedy by allowing of a letting for any period not exceeding one year. The rent will of course go to account of arrears of rent-charge and costs.

5 & 6 Vict. c. 54. Power in certain cases to use tithe commutation maps for parochial purposes.

13. And be it enacted,* That it shall be lawful for any Board of Guardians of any parish or union, with the consent of the Poor Law Commissioners, and subject to such conditions as the said Poor Law Commissioners may prescribe, to pay out of the rates of any parish any portion of the cost of making or providing any map or plan which shall have been confirmed under the hands and seal of the Tithe Commissioners, or any other sum of money by way of consideration for use of the said map or plan, for the purpose of estimating the net annual value of property in respect of which rates may be assessed for the relief of the poor; and after the Tithe Commissioners shall have certified in writing that such money has been paid, the overseers of the parish, or any person authorized by them in writing, or any officer of the said Board of

* Landowners are now liable to provide the map for the commissioners, and two copies for deposit in the parish, and with the bishop's registrar, but the ratepayers are liable to provide a further map, under the Parochial Assessment Act. The original maps cannot be used for the latter purpose, as the guardians and ratepayers have not the control of the map, it being deposited with the Tithe Commissioners; and the poor-law commissioners do not consider that the power exists of dispensing with such control under the Parochial Assessment Act. This clause has been inserted with the sanction of the poor-law commissioners, enabling ratepayers and guardians to use tithe maps for parochial purposes. It is, however, confined to first class maps, but it will be a considerable relief to the ratepayers, including of course owners of rent-charge who are liable to contribute to the rates, which will be proportionably diminished by being relieved from a portion of the costs of a parochial map.

Guardians, or any person authorized by them in writing, shall at all reasonable times have access to the copy of the said map or plan deposited with the incumbent and church or chapel wardens of the parish, or other persons approved by the said Tithe Commissioners, and may inspect and make copies or extracts from the said copy, without paying anything for such access or inspection, or for making such copies or extracts. 5 & 6 Vict. c. 54.

Power to alter apportionments.

14. And whereas by the first-recited Act power is given for altering apportionments of rent-charge by the Commissioners of land tax, on the application of the owner of the lands charged therewith, and it is expedient that the power thereby given should be extended, and also that during the continuance of the Tithe Commission the like power should be vested in the Tithe Commissioners: be it enacted,* That if

* By the 6 & 7 W. IV. c. 71, § 72, landowners desirous of altering the apportionments on their lands may do so on certain conditions through the medium of the land-tax commissioners, and with the consent of two justices. This clause extends the power to the Tithe Commissioners. It also extends the present power by enabling, as well the land-tax commissioners and justices, as the tithe commissioners to effect such alterations on the application of any one of several landowners on whose lands a joint rent-charge has been fixed. At present this can only be done by a joint application, and in many instances, particularly in the metropolitan parishes, or in places where plots of land are let for building purposes, parties will not concur. This clause gives the required relief.

5 & 6 Vict. c. 54. at any time after the confirmation of any instrument of apportionment it shall appear that the lands charged with one entire rent-charge belong to or have become vested in several owners, and that any of the owners of such lands shall be desirous that the apportionment thereof should be altered, it shall be lawful for the commissioners of land tax for the county or place where the said lands are situated, or any three of them, to appoint, by notice under their hands, a time and place for hearing the parties to such application, and all other parties interested therein; and upon satisfactory proof of such notice having been served on all parties interested full twenty-one days before the day of hearing, to proceed to alter the apportionment in such manner and in such proportion amongst the said lands as to them shall seem just, subject nevertheless to the consent of two justices of the peace, as in the said first-recited Act provided; and further, that upon such application being made to the said Tithe Commissioners, they shall have the same power of making such alteration as by the said first-recited Act and by this Act is vested in the commissioners of land tax, and that without any such consent of two justices of the peace; provided, that no alteration of any apportionment shall be made under the first-recited Act or this Act, whereby any

rent-charge shall be subdivided, so that any subdivision thereof shall be less than five shillings.* 5 & 6 Vict. c. 54.

15. And whereas it is expedient to make further provision for recording all such alterations of apportionment; be it enacted,† That the registrar of every diocese, as soon as conveniently may be after the passing of this Act, shall cause to be made and sent to the office of the Tithe Commissioners a copy, certified under his hand, of every instrument of altered apportionment in his custody which was made before the passing Copy of instrument of altered apportionment to be sent to Tithe Office.

* The proviso is added to remedy a great hardship inflicted on the tithe-owner by the power which the landowners at present possess of subdividing their rent-charges almost indefinitely, the only limit being that the land shall be three times the value of the rent-charge. In some parishes this might lead to an infinite number of minute charges, making the cost of collection far to exceed the value of the amount to be collected. By this proviso no subdivision can be less than five shillings, and hence the lowest half-yearly payment would be two shillings and sixpence. Of course this does not affect original rent-charges which of necessity are often apportioned in very minute sums.

† This clause, in pursuance of the recommendation in the commissioners' report, provides that alterations of apportionments should be recorded at the Tithe Commission, as well as in the parish and bishop's registry. This is obviously an improvement, with reference to the preserving accurate and uniform records relating to rent-charges. The expense of copies of altered apportionments, already effected, is to be borne by the Tithe-commission, that of future alterations, by the parties. The duty of supplying a copy of the alterations already effected, is charged upon the registrars of the several dioceses, to whom, under the original clause, (6 & 7 W. IV., c. 71, § 72,) such copy is required to be sent.

5 & 6 Vict. c. 54.

of this Act, the reasonable cost of making and sending which copy shall be defrayed by the Tithe Commissioners as part of the expense of putting in execution the Acts for the Commutation of Tithes; and after the passing of this Act three counterparts shall be made of every instrument of altered apportionment at the expense of the land-owner desiring the alteration; and two of the said counterparts shall be sent as provided by the first-recited Act, and the third shall be sent to or deposited in the office of the Tithe Commissioners, or, after the expiration of the Tithe Commission, shall be sent to and kept by the person having custody of the records and papers of the said commission, and shall be annexed to the instrument of apportionment in the custody of the said commissioners, or the person having the custody of their records and papers.

Remedy for enforcing payment of contribution to Rent-charge.

16. And be it enacted,* That in case any land

* As the law at present stands,—supposing the lands of A and B to be charged with one payment of rent-charge, and the owner distrains on the lands of A alone, A is compellable to pay the whole amount, and he can only call on B, by action or suit for contribution. In cases of future alterations of apportionments, this may always occur when the rent-charge has reached the minimum of five shillings, fixed by clause 14. In such case the party paying any half-yearly amount of rent-charge, may, from time to time, under this clause, go before the justices, and obtain a just contribution, and the costs, which would be trifling, would fall on the party liable to contribution, but refusing it unjustly.

charged with one amount of rent-charge shall belong to two or more land-owners in several portions, and the owner of any one of such portions, or his tenant, shall have paid the whole of such rent-charge, or any portion thereof greater than shall appear to him to be his just proportion, and contribution thereto shall have been refused or neglected to be made by any other of the said land-owners, or his tenant, after a demand in writing made on them, or either of them, for that purpose, it shall be lawful for any justice of the peace acting for the county or other jurisdiction in which the land is situated, upon the complaint of any such land-owner, or his tenant or agent, to summon the owner so refusing or neglecting to make contribution, or his tenant, to appear before any two or more such justices of the peace, who, upon proof of the demand and of service of the summons,* as hereinafter provided, whether or not the party summoned shall appear, shall examine into the merits of the complaint, and determine the just proportion of the rent-charge so paid as aforesaid, which ought to be contributed by the land-owner of such other portion of the said land, and by order under their hands and seals, shall direct the payment by him of what shall in their judgment be due and payable in respect of such

5 & 6 Vict. c. 54.

* See next clause, as to service of this demand and summons.

5 & 6 Vict. c. 54.

liability to contribution, with the reasonable costs and charges of such proceedings, to be ascertained by such justices; and thereupon it shall be lawful for the complainant to take the like proceedings for enforcing payment of the said amount of contribution and costs, and with the like restriction as to the arrears recoverable, as are given to the owner of the rent-charge by the said first-mentioned Act or this Act for enforcing payment of the rent-charge.*

Service of Summons, &c.

17. And be it enacted,† That service of the said demand in writing and summons, or of any notice to distrain, or copy of writ to assess the arrears of rent-charge, or notice of the execution thereof under the first-recited Act, or the several Acts to amend the same, or this Act, upon any person occupying or residing on the land chargeable with the rent-charge, or in case no person shall be found thereon, then affixing the same in some conspicuous place on the land,

* That is, two years arrears only. See 6 & 7 Wm. IV., c. 71, §§ 81, 82.

† This is a provision giving facilities for service of summonses, notices, and the like. It often happens, in cases of building-ground, or land comparatively waste, that the owner, or even the occupier cannot be found, or there may be great uncertainty who represents either interest, and, not unfrequently, personation takes place, where the party is contumacious, and does not scruple to commit the fraud of deceiving the claimant, whose whole proceedings are often dependant on the regularity of the first summons. This clause will obviate such difficulties in future.

shall be deemed good service of any such summons, writ, or other proceeding. 5 & 6 Vict. c. 54.

18. And be it enacted,* That it shall be lawful for all defendants in replevin, brought on any distress for rent-charge payable under the said first-recited Act, or the several Acts to Provision for general Avowry in actions of Replevin for Rent-charge.

* This clause is taken, almost *verbatim*, from the 11 G. II. c. 19, § 22, which statute was passed for the due protection of landlords in general. The Tithe-Commutation Acts, it is true, extend the ordinary remedies for recovery of rent in arrear to rent-charges; but they do not technically give the protection secured only to *landlords* under the statute. Thus, in case the owner of the rent-charge is obliged to distrain for it, and the landowner chooses to dispute the validity of the distress, or the liability of the land to the payment, he has resort to the ordinary remedy of an action in replevin, in which the landlord is compellable either to *avow* that he distrains in his own right, setting forth what that right is, or to set forth, or in technical language, to *make cognizance* of, *i. e.*, make known, what is the title of any other person under whom he claims. Hence it follows, that in distraining for tithe commutation rent-charge, he is obliged not only to avow that he is owner, or to set forth the owner's title, but also to aver that the rent-charge was duly imposed under the Tithe-Commutation Acts, and this involves the necessity of further averring and proving that every stage in the Commutation was duly followed. The vexation and cost of this will be understood by the fact that in a recent case, when a rent-charge of 6*s.* 6*d.* was distrained for, and the party paid, after having replevied, he had to pay in addition taxed costs, which, owing to the necessity for this special pleading and proof, amounted to 26*l.* By this provision it will be enough to aver that the lands were liable under the Tithe Commutation Acts, and that the rent-charge was in arrear, almost in the precise words of the enactment itself, and the costs will, probably, be little more than as many shillings, as they now amount to in pounds.

5 & 6 Vict. c. 54.

amend the same, or this Act, to avow or make cognizance generally that the lands and tenements whereon such distress was made were chargeable with and liable to the payment of a certain yearly amount of rent-charge under the provisions of the statutes for the Commutation of Tithes in England and Wales, which rent-charge, or some part thereof, was in arrear and unpaid for the space of twenty-one days next after some half-yearly day of payment thereof, and after ten days' notice in writing, as required by the said Acts, and that a certain amount of such rent-charge, according to the prices of corn, as directed by the said Acts, was at the time of the said distress due to the person entitled to the rent-charge.

Irregularity not to vitiate proceedings.

19. And be it enacted,* That where any distress shall be made for any rent-charge payable under the said recited Acts or any of them, or this Act, and justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent, in the conduct, sale, or disposition of the distress, the distress itself shall not be therefore deemed to be unlaw-

* This clause, in like manner, extends the protection of the same statute (11 Geo. II., c. 19, §§ 19, 20,) to the proceedings for recovery of rent-charges. The protection is well understood, and in constant requisition, in ordinary cases; and it is but just that, as rent-charges are assimilated to rents in general, they should receive the like protection.

ful, nor the party making it deemed a trespasser from the beginning, but the party aggrieved by such unlawful act or irregularity may recover full satisfaction for the special damage in an action upon the case; provided nevertheless, that no plaintiff shall recover in any action for any such unlawful act or irregularity, if ten days' notice in writing shall not have been given to the defendant by the plaintiff of his intention to bring such action before the commencement thereof, or if tender of sufficient amends has been made by the party distraining or his agent before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant. 5 & 6 Vict. c. 54.

20. And be it enacted,* That this Act shall be construed with and as part of the first-recited Act, as amended by the several Acts passed for the amendment thereof and by this Act; and that all provisions in any of the said Acts relating to land of copyhold tenure shall apply to land of customary tenure,† or any other tenure subject to arbitrary fine, and that all provisions Act to be construed with 6 & 7 W. IV, c. 71.

* See note to § 1, referring to the existing Acts. By this enactment, all the acts are read as one act, and thus all will be interpreted alike. See interpretation clause, 6 & 7 W. IV., c. 71, §§ 12, 16;—1 & 2 Vict. c. 64, § 5;—2 & 3 Vict. c. 62, § 37;—3 & 4 Vict. c. 15, § 29.

† See 1 & 2 Vict. c. 64, § 4, and 2 & 3 Vict. c. 62, § 7.

5 & 6 Vict. c. 54. in the said Acts or in this Act relating to glebe land shall apply to all land holden by any spiritual person in right of his benefice.

Act may be amended. 21. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

Septennial Prices of each Kind of Grain in each Year, from 1835 to 1841.

Periods of Seven Years ending Chistmas.	Average Price per Imperial Bushel.									
	Wheat.		Barley.		Oats.		Rye.		Beans.		Peas.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
1835 . .	7	0¼	3	11½	2	9	4	3½	4	6¼	4	9
1836 . .	6	8½	3	11¾	2	9	4	3¼	4	6¾	4	9½
1837 . .	6	6¾	3	11¼	2	8¾	4	4¼	4	10	4	8¼
1838 . .	6	6¼	3	9¾	2	8	4	2	4	6¾	4	8
1839 . .	6	9	3	11¼	2	9¼	4	3½	4	8	4	9
1840 .	6	11¾	4	1	2	10¾	4	0¼	4	10	4	10¼
1841 . .	7	3¾	4	2	2	11¼	4	5¼	4	11	4	10½

*** The prices of wheat, barley, and oats, for the seven years ending Christmas, 1835, form the basis on which every rent-charge is fixed at the period of the commutation under 6 & 7 W. IV. c. 71, § 57. Those for the seven years ending at each succeeding Christmas regulate the payments in each succeeding year, under the same stat. § 63, and 3 & 4 Vict. c. 15, § 20. This table is copied from House of Commons Paper 18, presented during the last session. (For remarks and rules for calculating these annual variations, see Appendix to the latter stat., White's edition p. 65.)

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to assess arrears of rent-charge, how to be served . .	17	—

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